

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**AFT MICHIGAN, AFT, AFL-CIO,
ET AL.,**

Plaintiffs-Appellants,

v

STATE OF MICHIGAN,

Defendant-Appellee,

Supreme Court No. **148748**

Court of Appeals No. 313960
Court of Claims No. 12-104-MM

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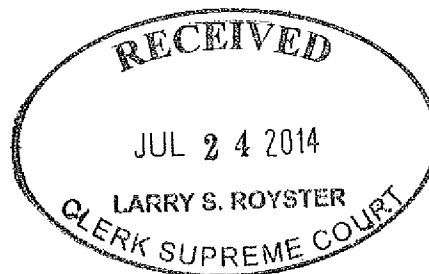
APPELLANTS' BRIEF

ORAL ARGUMENT REQUESTED

**THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE
CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER
STATE GOVERNMENTAL ACTION IS INVALID**

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STATEMENT OF QUESTIONS PRESENTED

1. Does the retention of the value of interest earned on contributions made by, but will be refunded to, public school employees who contribute to, but are not eligible for, post employment retiree health care, constitute a Taking without just compensation?

The Court of Claims answered "No".

The Court of Appeals answered "No."

Plaintiffs-Appellants answer "Yes".

Defendants-Appellees answer "No".

2. Does 2012 PA 300 continue the defect noted in *AFT Michigan v State of Michigan*, 297 Mich App 597; 825 NW2d 595 (2012) as public school employees who contribute to the School Employees Retirement System to pay for post employment retiree health care are not guaranteed such health care and contributions are refunded without actual interest earned?

The Court of Claims answered "No".

The Court of Appeals answered "No."

Plaintiffs-Appellants answer "Yes".

Defendants-Appellees answer "No".

3. Does 2012 PA 300 breach a contract between the State of Michigan and public school employees by requiring employees to increase contributions to the Public School Employees Retirement System as a condition of maintaining in effect a key term of their retirement formula?

The Court of Claims answered "No".

The Court of Appeals answered "No."

Plaintiffs-Appellants answer "Yes".

Defendants-Appellees answer "No".

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STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

A. Nature of the Action and Parties

1. This action was commenced in the Court of Claims (as then constituted) seeking both injunctive and declaratory relief. Plaintiffs asserted that 2012 PA 300, an amendment to the Michigan Public School Employees Retirement Act, MCL 38.1301 *et seq.*, unconstitutionally required public school employees to make a critical, life affecting, decision in an unreasonable period; that the statute breached a contract with public school employees regarding the terms of their employment; that the retention of the value of interest earned on refunded contributions to the Public School Employees Retirement System was an unconstitutional Taking without just compensation; that 2012 PA 300 did not cure the defect in the law noted by the Court of Appeals in *AFT Michigan v State of Michigan*, 297 Mich App 597; 825 NW2d 595 (2012); J. apx. 56a.

2.

The AFT Michigan Plaintiffs are labor organizations. Collectively, they represent more than 20,000 public school employees each of whom is a Member of the Michigan Public School Employees Retirement System ("MPSERS") and subject to the Public School Employees Retirement Act, MCL 38.1301 *et seq.* ("MPSERA"). They have standing to advocate on behalf of these individuals. *AFT Michigan v State of Michigan*, 297 Mich App 597, 607; 825 NW2d 595 (2012).

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B. Public School Employees Retirement

1.

Michigan has had a succession of school employee retirement acts since the 19th century. There were, at one time three separate and distinct retirement funds created by separate statutes. See *Advisory Opinion re Constitutionality of 1972 PA 258*, 389 Mich 659, 661; 209 NW2d 200 (1973):

“Employees in the public school system in Michigan are all subject to one of three retirement plans. One plan covers employees in the Detroit system. Another plan covers public school employees outside the Detroit system who are eligible for Federal social security on account of their employment in the system. The third plan covers public school employees outside the Detroit system who are not eligible for Federal social security by virtue of their employment in the system.”

A comprehensive statute was enacted in 1945, 1945 PA 136, amended many times and then wholly replaced in 1980. 1980 PA 300. The current statute is built on the 1980 enactment. The statute, MCL 38.1301, *et seq.*, provides a retirement benefit to public school employees who meet the basic requirements for vesting.

2.

(a)

As presently written the public school employees retirement act, MCL 38.1301 *et seq.* (“MPSERA”) provides retirement benefits to three broad classes of public school employees:

- public school employees hired after September 4, 2012;
- public school employees hired after July 1, 2010 but before September 4, 2012;
- public school employees hired before July 1, 2010.

Public school employees hired on September 4, 2012 and after are virtually shut out of the retirement process by being offered only a 401(k) style plan. Those hired after July 1,

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2010, but before PA 300 are in a "hybrid" plan which may include a 401k type plan together with the more traditional defined benefit. MCL 38.1341b.

(b)

The third class of persons is the most numerous. These public school employees fall into two general groups. One group includes persons who were hired *before* January, 1990 and have never been required to contribute to the cost of their pension. These persons are in the *Basic* plan.

The other group includes persons hired *after* January 1, 1990. These employees have been required to contribute varying amounts to the cost of their retirement and, as a result, have obtained certain advantages (an earlier retirement date, an enhanced retirement allowance). These persons are in the *Member Investment Plan* (MIP). When MIP was created, persons hired before January, 1990 were given the option to participate in MIP and many did.

C. The Retirement Formula

MPSERA functions in a manner that is the same as myriad other retirement plans provided by statute or by local ordinance. A person is entitled to a retirement allowance. The amount of the allowance is computed using three factors:

- "Final average compensation." This reflects the average of the individual's compensation over a specified period of time (often the last three years of the person's employment);
- "Years of service." This reflects the total service credit accumulated by the employee. The service credit includes work for the covered employer but may also include military service or service with other specified employers.

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- “Multiplier.” The multiplier is a factor expressed as a per cent. Until PA 300, the multiplier for all persons covered by MPSERA was 1.5%.

A typical retirement allowance under MPSERA might be as follows: the final average compensation for a person is \$65,000. The individual worked 33 years. The equation would be $[\$65,000 \times 30 \times 1.5\%]$ or \$29, 250 per annum.

D. The PA 300 Changes

1.

The Legislature has, in the past, made many changes to the Retirement Act. However, none of these changes affected then current employees; they were all prospective in nature or were voluntary for current Members of the retirement system. The most significant changes involve contribution to the cost of retirement. MIP became mandatory in 1990 for new hires. The “hybrid” plan became mandatory in 2010 for new hires. And the virtual termination of the retirement plan became mandatory as part of PA 300. But none of these changes was applied to current employees; they applied only to new hires.

2.

On September 4, 2012 the Governor signed Senate Bill 1040 which then became 2012 PA 300 and was immediately effective. This legislation makes numerous changes to the Public School Employees Retirement Act. Those that are of significance to this litigation follow.

(a)

Section 43g requires that all public school employees persons pay at least 4% of their compensation to maintain their current retirement formula. Previous to PA 300 persons in the Member Investment Plan paid varying amounts toward their plan but not greater than 6.9% of income. However, those in the Basic plan paid nothing.

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(b)

Section 84 b imposes a sanction on members who refuse to pay the increased costs or who fail to make a decision by the deadline (approximately December 1, 2012). Retirement costs are not increased for such persons. But the retirement allowance for them will be computed at 1.5% times years of service times final average compensation only for their years of service from hire until about December 1, 2012; *thereafter, the retirement allowance will be computed at 1.25% times years of service times final average compensation*. The consequence could be a dramatic reduction in the retirement allowance for such persons.

The same section permits public school employees to opt out of MPSERS completely with current contributions frozen and future retirement based on a defined contribution plan in which an employer will match employee contributions up to 4% of compensation.

(c)

Section 43e and 91a(8) are apparently intended to repair the previous version of the law, found unconstitutional in *AFT Michigan v State of Michigan, supra*, 297 Mich App 597 (2012). The new provision provides post employment retiree health care to a public school employee only if they pay 3% of their compensation into a fund to be used to purchase and pay for post-employment retiree health care for persons who have already retired. The section provides for a refund of contributions if the Member does not receive post employment retiree health care, themselves. This is, it appears, intended to fix the problem noted in *AFT Michigan* in which Members were required to pay 3% of their compensation to fund post employment retiree health care of others without any assurance that they, themselves would receive that benefit. Now the statute provides for an opt-in and a refund.

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The repair is, however, illusory. Individuals who voluntarily pay into the system may never receive the benefit they sought; and, if so, their contributions are repaid under terms so onerous as to be an unconstitutional Taking without just compensation.

THE PROCEEDINGS BELOW

A. Proceedings Before the Court of Claims

1.

Plaintiffs filed suit in the Court of Claims challenging sections 43e, 43g, 59(3), 84b and 91a(8) of 2012 PA 300 as unlawful. Initially, Plaintiffs sought, and the Court of Claims granted, a motion for a temporary restraining order enjoining the State of Michigan from enforcing the Section 59(3) "window period." Plaintiffs argued, and the Court agreed, that the time allowed by the statute to make several momentous decisions was so brief as to be unreasonable. Ultimately, the Court of Claims permanently enjoined application of that provision of the Act; that decision was not appealed by the Attorney General and was not considered by the Court of Appeals. The Michigan legislature has since amended the enjoined provision to provide for an extended window period. 2012 PA 359. That aspect of Plaintiffs' complaint is now concluded.

2.

Plaintiffs asserted that section 43(d) and 91(a)(8) were invalid as they provided for the refund of certain contributions paid under terms so unreasonable as to constitute a Taking without just compensation. These sections require the refund of contributions intended to provide for post employment retiree health care of the employee where the employee does not qualify for that benefit. However, the contributions are paid only when the employee reaches

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age sixty, are paid over five years and the employee is awarded only 1.5% interest. The Court of Claims stated that she was "not happy about that and it's probably usury" but the terms were not unlawful because a "choice" was provided. J.apx. 34a.

Plaintiffs also asserted that sections 43b and 84g breached a contract between the State of Michigan and public school employees who were subject to the Retirement Act. Plaintiffs argued that the State had made express promises regarding retirement in a myriad of publications; that those promises had been breached because the State is now requiring public school employees to pay a greater proportion of their compensation in order to keep promised retirement terms intact. The Court of Claims denied relief regarding sections 43b and 84g. It concluded that the legislation did not affect any vested benefits, that the publications were only advisory and not part of a contract. J. apx. 34a.

The Court of Claims denied relief and granted summary disposition to the Defendant State of Michigan on these claims. There was no written opinion.

B. The Decision of the Court of Appeals

The Court of Appeals affirmed the decision of the Court of Claims. In an opinion by Judge Kelly, joined by Judge Saad with Judge Gleicher concurring, the Court concluded that no contract was created by the various publications as a disclaimer was provided; that 1980 PA 300 did not create a contract; that 2012 PA 300 did not contravene Article 9 § 24 of the Constitution of 1963; that 2012 PA 300 had, indeed, cured the defect observed by the Court of Appeals in *AFT Michigan v State of Michigan, supra*; that 2012 PA 300 did not unconstitutionally retain the value of interest earned on monies paid into a fund for post employment retiree health care which were refunded to persons who did not receive health care. The decision of the Court of Claims was affirmed in all respects.

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C. Leave Granted

This Court granted Plaintiffs' application for leave to appeal on May 21, 2014.

ARGUMENT

I. Retention of the Value of the Interest Is a Taking Without Just Compensation

Summary of Argument I

Section 91a(8) of PA 300 allows the State of Michigan to keep monies deposited with MPSERS by public school employees who choose to opt in to MPSERS post employment retiree health care but, for myriad reasons, are never eligible to receive that benefit. However, the statute does not require prompt refund of contributions made by these public school employees although they have ceased to be Members of MPSERS, are not entitled to post employment retiree health care and are entitled to a refund of their contributions. Although the deposits are eventually refunded, the State of Michigan is permitted to keep these deposits for decades, invest the deposits and retain the increase in value of the deposits. The refund, when ultimately made, provides the public school employee with a fraction of the actual interest that has accrued. This is a *per se* Taking without just compensation in violation of the Fifth Amendment to the United States Constitution and Article X § 2 of the Constitution of 1963.

A. The Retention of the Value of Interest Earned

1.

Section 91a(8) states:

A member or former member who does not make the election under subsection (5), who is 60 years of age or older, who does not qualify for the payment of health insurance coverage premiums by the retirement system under section 91, and who files an application with the retirement system on or after termination of employment shall receive a separate retirement allowance as calculated under

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this subsection. Except as otherwise provided under this subsection, the separate retirement allowance under this subsection shall be paid for 60 months and shall be equal to 1/60 of the amount equal to the contributions made by the member under section 43e... The amount of the separate retirement allowance as determined under this subsection shall be increased in a manner as determined by the retirement system by a percentage equal to 1.5% multiplied by the total number of years that member made contributions under section 43e.

MCL 38.1391a(8).

2.

(a)

To understand why this is a Taking, it is important to recognize that there is a class of persons who will not receive post-employment retiree health care although they initially opted to pay MPSERS for that privilege. The largest such group will be individuals who, for a myriad of reasons, will work for less than ten years as a member of MPSERS and therefore will not obtain rights to a pension or post employment retiree health care.

Persons who do not qualify for retiree health care for any reason will have their contributions refunded, MCL 38.1391a(8). However, the terms of the refund are so unreasonable that they amount to an unconstitutional Taking. As noted above:

- The individual may only begin to receive the refund after their 60th birthday;
- the refund is paid in sixty installments;
- The refund does not include the actual value of the interest earned on the person's deposits; 1.5% interest is added to the refund, far less than the actual value of interest earned and retained by MPSERS .

(b)

To further realize why the retention of earned interest is a Taking, consider the example which follows. A public school employee is hired by a school district and works for nine years and then permanently leaves public education in Michigan (the reasons for this are myriad

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including career change or relocation) . This person will never vest in MPSERS and will not receive a retirement allowance. The individual will also not be eligible for post employment retiree health care, although they have paid into MPSERS for the purpose, because they will not be eligible for a retirement allowance. They will, however, be eligible for a prompt refund of their retirement contributions under MCL 38.1365. But payments for post employment retiree health care may not be paid for decades.

In our example, the individual might have entered MPSERS at age 24, immediately upon graduation from college or university. That person might leave public school employment at, say, age 33. If their salary were, for example, \$45,000, they will have paid in about \$12,150 as contribution to the trust for post employment retiree health care ($\$45,000 \times 3\% \times 9$). Under PA 300, the State of Michigan will keep that money until the person is age 60 – 27 years. The “separate retirement allowance” is be paid in sixty installments. The allowance is be computed by dividing the pensions contributions and multiplying them by 1.5%.

3.

The Public School Employees Retirement Act directs that the Office of Retirement Systems will assume an annual growth rate of eight percent. MCL 38.1404(a)(2). Therefore, ORS is required to assume that the deposits to its funds will increase in value and by a substantial amount.

In the example posited, the Member will have invested 12,150 with MPSERS for 27 years. At 1.5% interest, the person will be paid a total of \$18,160. However, using MPSERS required rate of return of 8%, the investment should be valued in excess of \$97,000. The difference—more than \$78,000—is kept by MPSERS.

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B. The Retention is a Per Se Taking

The retention of the value of the interest earned on the accumulated contributions of ineligible persons is a Taking under the Fifth Amendment to the Constitution of the United States and Article 10 § 2 of the Constitution of 1963.

1. The Retention of Interest Is a Taking

(a)

In *Webb's Fabulous Pharms v Beckwith*, 449 US 155, 164-65, 101 S Ct 446, 452-53; 66 L Ed 2d 358 (1980) the United States Supreme Court held that the value of interest earned on monies placed in an account in an interpleader action could not be retained by the State and that a statute requiring the same could not be enforced. Rather, the exaction was a "forced contribution to general governmental revenues, and it is not reasonably related to the costs of using the courts." Indeed, "[the] Fifth Amendment's guarantee . . . was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.", citing *Armstrong v United States*, 364 US 40, 49 (1960).

Interest earned on contributions to a government fund belongs to the owner of the principal. It cannot be taken by the state simply because the state administers the fund into which it is deposited.

(b)

The issue of state retention of the value of interest was again addressed in *Brown v Legal Foundation of Washington*, 538 US 216; 123 S Ct 1406; 155 L Ed 2d 376 (2003). In *Brown* the Supreme Court considered the retention, by the State of Washington, of the value

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of interest earned on attorney IOLTA accounts and whether that constituted a Taking, in Constitutional terms, without just compensation.

“While it confirms the state’s authority to confiscate private property, the text of the Fifth Amendment imposes two conditions on the exercise of such authority: the taking must be for a “public use” and “just compensation” must be paid to the owner.”

Brown v Legal Found, supra, 538 US at 231-32.

(c)

The retention of the interest is a Taking because (a) the Member has a clear right to refund of her contributions as she will not be eligible for post employment retiree health care; (b) MPSERS keeps her contributions for an extended period and invests them; (c) the Member is deprived of access to the value of the contributions for an extended period; (d) the Member does not receive the actual value of the interest earned on the contributions.

The retention of the value of the interest is a Taking for which compensation is due.

2. A Per Se Taking

(a)

Because property is actually seized, the retention of the value of interest is a *per se* taking. This is not a “regulatory” taking in which government has, by rule or statute, restricted the use of property. See e.g. *Block v Hirsh*, 256 US 135; 41 S Ct 458; 65 L Ed 865 (1921) (government regulation that merely prohibits landlords from evicting tenants unwilling to pay a higher rent held not a taking); *Village of Euclid v Ambler Realty Co.*, 272 US 365, 47 S Ct 114, 71 L Ed 303 (1926) (rule prohibiting private uses of part of an owner’s property). Instead, this is the actual appropriation of an item of value.

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The taking here is the seizure of money. The outright seizure of property is subject to a "per se" analysis under the Fifth Amendment. *Brown, supra*, 235. This taking is subject to the per se approach because it is the seizure of the value of the accrued interest on monies retained by MPSERS.

3. Taking for a Public Purpose

The Taking is for a public purpose. The Michigan Legislature consciously permitted MPSERS to keep the increase in value of the contributions as opposed to requiring an immediate refund as mandated elsewhere in the statute. Therefore, both the principal value of the contributions and the value of the accrued interest redound to the benefit of the MPSERS funds. In short, MPSERS is able to retain the money—potentially for decades—invest it and keep the proceeds. This amounts to a very low interest loan from the public school employee to MPSERS. That is, by definition, a taking for a public purpose.

4.

The reasoning of both *Brown* and the earlier decision to similar effect in *Phillips v Washington Legal Foundation*, 524 US 156, 172, 118 S Ct 1925, 141 L Ed 2d 174 (1998) have been adopted by the Michigan Court of Appeals. In *Butler v Michigan State Disbursement Unit*, 275 Mich App 309, 312; 738 NW2d 269 (2007), the Court noted that Michigan follows the rule the Supreme Court stated in *Brown* and that "the 'just compensation' required by the Fifth Amendment is measured by the property owner's loss rather than the government's gain." Citing *Brown, supra*, 235-236; *Butler, supra*, 271. The Court of Appeals agreed that the retention of the value of interest earned on child support deposits could be a Taking. However, in *Butler*, the Plaintiff's loss was less than the administrative costs that would be incurred if the value of the interest was actually paid to Plaintiff. Therefore, Plaintiff had no actual loss. But

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the precept is clear: interest is the property of the individual; retention of the value of interest earned is a Taking for which just compensation may be due.

C. Just Compensation is Due

1.

The Fifth Amendment does not prohibit all Takings; instead it requires that just compensation be paid. Here, MPSERS does not pay just compensation because it keeps the actual interest earned and pays the Member considerably less than MPSERS has gained and less than is commercially reasonable.

Compensation is "...measured by the property owner's loss rather than the government's gain." *Brown, supra*, at 236. In *Brown, supra*, citing to *Phillips v Washington Legal Foundation*, 524 US 156, 172; 118 S Ct 1925; 141 L Ed 2d 174 (1998), the Court reaffirmed its holding that "that the interest income generated by funds held in IOLTA accounts is the 'private property' of the owner of the principal." No compensation was due to the individual Plaintiffs in *Brown* because the amount of interest they actually would have earned was virtually nil. But the case makes clear that claiming the value of the interest on the IOLTA deposits was, indeed, a Taking for which "just compensation" might have been due.

By contrast, here, there is a measurable loss. The loss may be measured in two different ways. First is the value of time. MPSERS keeps a Member's contributions for an extended period of time. The Member has lost the use of that money for what may turn out to be decades. If refunded promptly, the Member will have the opportunity to invest the money at reasonable rates of return. The annual return on many mutual funds exceeds 5%; some are close to 10%. Certainly there are no guarantees but even a conservative investor should be able to do better than the 1.5% provided by MPSERS.

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Second, MPSERS is directed to assume an annual growth rate of 8%. It requires little arithmetic to realize that 1.5% is a fraction of the growth that MPSERS itself presumes.

2.

Just compensation means the actual value of a loss. The standard is the impact of the Taking on the individual; what they lost. The value of a loss may sometimes be difficult to quantify. It is not difficult here. The Member receives 1.5% interest paid decades after they made the contribution.

The Member has lost the value of her contributions. She is entitled to be compensated for her loss.

D. Waiver of Constitutional Rights is Precluded

The Court of Appeals rejected the contention that retention of interest was a Taking because "participation in the retiree healthcare system is now voluntary." J. apx., 86a; slip op., 20. However, with respect, this conclusion misses the point entirely. The State of Michigan cannot require an individual to waive rights available under the Constitution as a condition of receipt of a state provided benefit.

1.

Rights arising under the Fifth Amendment and Article 10 § 2 are as personal to the individual as any other rights guaranteed by either Constitution. An individual's property is not protected against Taking. However a Taking must be accompanied by just compensation. These rights are not different than the right of freedom of speech or assembly.

2.

An individual does not waive rights under the law by voluntarily contributing toward the cost of post employment retiree health care. When the employee makes the decision, it can

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be presumed that the employee expects to be eligible for health care. And there is nothing in the law or in any MPSERS publication which warns an employee that participation waives Constitutional rights. But, if there were, the waiver would not be enforceable.

Government may not impose "unconstitutional conditions" in exchange for receipt of state provided benefits:

"We have said in a variety of contexts that "the government may not deny a benefit to a person because he exercises a constitutional right." *Regan v. Taxation With Representation of Wash.*, 461 U. S. 540, 545, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983). See also, e.g., *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 59-60, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006); *Rutan v. Republican Party of Ill.*, 497 U. S. 62, 78, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (1990). In *Perry v. Sindermann*, 408 U. S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972), for example, we held that a public college would violate a professor's freedom of speech if it declined to renew his contract because he was an outspoken critic of the college's administration. And in *Memorial Hospital v. Maricopa County*, 415 U. S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974), we concluded that a county impermissibly burdened the right to travel by extending healthcare benefits only to those indigent sick who had been residents of the county for at least one year. Those cases reflect an overarching principle, known as the unconstitutional conditions doctrine, that vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up."

Koontz v St Johns River Water Mgmt. Dist., __ US __; 133 S Ct 2586, 2594; 186 L Ed 2d 697 (2013).

And:

"Those precedents have long since rejected Justice Holmes' famous dictum, that a policeman "may have a constitutional right to talk politics, but he has no constitutional right to be a policeman," *McAuliffe v. Mayor of New Bedford*, 155 Mass. 216, 220, 29 N.E. 517 (1892). Recognizing that "constitutional violations may arise from the deterrent, or 'chilling,' effect of governmental [efforts] that fall short of a direct prohibition against the exercise of First Amendment rights," *Laird v. Tatum*, 408 U.S. 1, 11, 33 L. Ed. 2d 154, 92 S. Ct. 2318 (1972), our modern "unconstitutional conditions" doctrine holds that the government "may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech" even if he has no entitlement to that benefit, *Perry v. Sindermann*, 408 U.S. 593, 597, 33 L. Ed. 2d 570, 92 S. Ct. 2694

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(1972). We have held that government workers are constitutionally protected from dismissal for refusing to take an oath regarding their political affiliation, see, e. g., *Wieman v. Updegraff*, 344 U.S. 183, 97 L. Ed. 216, 73 S. Ct. 215 (1952); *Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 17 L. Ed. 2d 629, 87 S. Ct. 675 (1967), for publicly or privately criticizing their employer's policies, see *Perry, supra*; *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274, 50 L. Ed. 2d 471, 97 S. Ct. 568 (1977); *Givhan v. Western Line Consol. School Dist.*, 439 U.S. 410, 58 L. Ed. 2d 619, 99 S. Ct. 693 (1979), for expressing hostility to prominent political figures, see *Rankin v. McPherson*, 483 U.S. 378, 97 L. Ed. 2d 315, 107 S. Ct. 2891 (1987), or, except where political affiliation may reasonably be considered an appropriate job qualification, for supporting or affiliating with a particular political party, see, e. g., *Branti v. Finkel*, 445 U.S. 507, 63 L. Ed. 2d 574, 100 S. Ct. 1287 (1980). See also *United States v. Treasury Employees*, 513 U.S. 454, 115 S. Ct. 1003, 130 L. Ed. 2d 964 (1995) (government employees are protected from undue burdens on their expressive activities created by a prohibition against accepting honoraria); *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 234, 52 L. Ed. 2d 261, 97 S. Ct. 1782 (1977)(government employment cannot be conditioned on making or not making financial contributions to particular political causes)."

Bd of County Comm'rs v Umbehr, 518 US 668, 674-675; 116 S Ct 2342; 135 L Ed 2d 843 (1996).

3.

What the Court of Appeals has said is that a condition of participation in the MPSERS program for post employment retiree health care is the involuntary waiver of a right guaranteed by both the United States and Michigan Constitutions. That is, the individual is supposedly knowingly giving up their right to receive just compensation in response to the taking of the value of the interest. That is directly contrary to what the Supreme Court has called the "unconstitutional conditions" doctrine.

Individuals who voluntarily participate in the retiree health care program are entitled to receive the reasonable value of the interest earned on their contributions when refunded. MPSERS may not lawfully take the substantial value of the interest and return a pittance. Section 91a(8) is therefore unconstitutional on its face.

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II. Section 43e Is Not Repaired

A. The Defect

In *AFT Michigan v State of Michigan, supra*, the Court of Appeals correctly concluded that section 43e of 2010 PA 75 violated the right of public school employees to substantive due process. The statute stated that each such employee must contribute 3% of their compensation to a fund to pay for post employment retiree health care of current retirees. However, none of the individuals paying into the fund were, themselves, guaranteed that they would receive post employment retiree health care when they retired.

2012 PA 300 concedes the validity of the decision of the 2012 Court of Appeals because it eliminates the mandatory nature of the 3% contribution and allows individuals to opt out of post employment retiree health care completely. However, the defect that the Court of Appeals noted has not been repaired; it has been replaced by a provision that is itself unconstitutional.

The Court of Appeals concluded that the defect noted originally was fully cured by transition of the payments from compulsory to voluntary. But the payments now made still lack any certainty that the individual paying into MPERS will actually receive post employment retiree health care. Further, the provision for a refund of payments is so unreasonable as to be itself a violation of the individual's right to substantive due process.

B. Participation Not Wholly Voluntary

The Court of Appeals described the system for retiree health care as "voluntary." J. apx. 83 a; slip op., 17. With respect, that is not completely accurate. Section 91a(5) of the Act, MCL 38.1391a(5), states:

"(5) Except as otherwise provided in this section, beginning September 4, 2012 and ending at 5 p.m. eastern standard time on January 9, 2013, the retirement system shall permit each qualified member to make an election to opt out of

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health insurance coverage premiums that would have been paid by the retirement system under section 91 and opt into the Tier 2 account provisions of this section effective on the transition date. A qualified member who makes the election under this subsection shall cease accruing years of service credit for purposes of calculating a portion of the health insurance coverage premiums that would have been paid by the retirement system under section 91 as if that section continued to apply.

MCL 38.1391a(5).

PA 300 granted a single, time limited, opportunity for current public school employees to opt out of post employment retiree health care and cease payment of the 3% required by section 43e, MCL 38.1343e of the School Employees Retirement Act, MCL 38.1301 et seq. However, the employee had to actively elect to opt out; the “default” was that they would continue to participate. It is a certainty that a class of individuals are continuing to pay into the PA 77 trusts because they did not act in time. Hence, it is a bit glib to say that participation in the payment of the 3% was fully voluntary.

C. Still No Guarantee

Persons who agree to pay into the trusts—voluntarily or otherwise—are not guaranteed payment of post employment retiree health care. Neither 2010 PA 77 (which created the Health Care Trusts) nor 2012 PA 300 reverse *Studier v Michigan Pub School Employees' Retirement Bd*, 472 Mich 642; 698 NW2d 350 (2005). There this Court held that this Article 9 § 24 of the Constitution of 1963 did not apply to health care benefits:

“Thus, in summary, we hold that health care benefits are not protected by Const 1963, art 9, § 24 because they neither qualify as ‘accrued’ benefits nor ‘financial’ benefits as those terms were commonly understood at the time of the Constitution’s ratification and, thus, are not ‘accrued financial benefits.’”

472 Mich at 658-659.

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Further, the Court held that the Legislature had not created a contract which insured the provision of health care benefits:

“However, we conclude that MCL 38.1391(1) does not create for retirees a contractual right to receive health care benefits and, therefore, reverse the Court of Appeals determination on that point.”

Id., 659-660.

PA 77 reinforces *Studier* by expressly disclaiming any promise or assurance that health care benefits will be proffered to retirees in the future. To the contrary, the statute disclaims any obligation to establish or maintain a program of benefits in the future. Section 3(6) states, in part:

“This act shall not be construed to define or otherwise assure, deny, diminish, increase, or grant any right or privilege to health care benefits or other postemployment benefits to any person or to assure, deny, diminish, increase, or grant health care benefits or other postemployment benefits, rights, and privileges previously or already granted to members or past members and their dependents by the applicable retirement act.”

MCL 38.2733(6).

Therefore, persons paying into the Health Care Trusts are promised nothing and guaranteed nothing.

D. Unconstitutional Taking

PA 300 provides for a refund of the payments into the trusts for a person who does not opt out of payment or who does not qualify for post employment retiree health care. However, as is submitted above, the terms of the refund are so unreasonable as to be a Taking without just compensation.

The Court of Appeals held that PA 300 committed the State of Michigan to nothing. The Legislature might, it seems, unilaterally terminate any payment for post employment retiree

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health care and apply the same to persons who continued to pay into the trusts. This is exactly the problem correctly noted by the Court of Appeals in *AFT Michigan, et al v State of Michigan, supra*. Yet the supposed repair requires public school employees to consent to the taking of the value of the interest earned on their contributions.

With respect, the decision of the Court of Appeals seeks to have matters both ways. First, there is no contract created by either PA 300 or the Publications issued by MPSERS. Second, the terms of the refund are acceptable because participation is voluntary. Yet that allows the State of Michigan to terminate post employment retiree health care totally, keep the money paid into MPSERS for decades and refund the money with minimal interest.

Section 43e has the same defects it had when it was adopted. It takes money without any guarantee of a return and then refunds those payments under terms that are unreasonable. Section 43e is a deprivation of the right of substantive due process for the same reasons expressed to this Court, and the Court of Appeals, in *AFT Michigan v State of Michigan, supra*.

III. 2012 PA 300 Breaches a Contract with Public School Employees

Summary of Argument III

Public school employees are parties to a contract with the State of Michigan regarding their retirement. For multiple generations, these employees have been given very clear representations with regard to the terms of retirement. They were told what they would receive, when they would receive it and what they would have to pay. 2012 PA 300 disregards express promises made by the State of Michigan to these individuals. It unilaterally changes the terms of a contract on which public school employees have relied and on which they were told to rely. This is a patent violation of a contract and the Court should not permit it.

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A. Promises Were Made

1.

The Michigan Public School Employees Retirement System ("MPERS") has long sought to inform public school employees about the terms of their retirement. Years before the internet came into existence, MPERS published myriad booklets, leaflets, forms and manuals which explained what an employee would receive and what they would pay. Some of these publications (hereafter "Publications") are annexed to this brief. Each of these documents contains an express promise with regard to the terms of the retirement plan offered by MPERS.

The oldest document readily available to Plaintiffs was printed in January, 1990. Exhibit 1. It is an effort to explain the retirement plan and allow persons to make a selection between the Member Investment Plan ("MIP") and the Basic Plan ("Basic"). It explains when a person may retire. It notes that, at the time, an individual could opt out of MIP at various times over a four-year period. And the book states how retirement is calculated:

Pension Formula

Your Retirement Plan provides a benefit that is determined by a formula. The formula is your final average salary times 1.5% (.015) times your total years of service credit (see Table 2 on page 4). Each year a Member's Statement of Account is provided which shows your wages, service credit, contributions, beneficiary designation, and other timely information.

Exhibit 1, page 7.

MPERS revised these Publications over the years. In 1997 another version of the document was prepared including the pension formula. Exhibit 2. See page 36 ("Calculating Your Monthly Pension")

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Yet another publication was issued without a date but with the same information.

Exhibit 3. See page 17 where the document provides advice on pension calculation:

How Much Will You Get?

The Pension Formula

"Your annual benefit is based on a formula that multiplies final average compensation times a pension factor of 1.5 percent times your years of service."

So important was this to the publication that the formula was printed in *54 point type* using a unique graphic. MPSERS intended the reader to be left with no doubt as to what the pension formula would be.

And another publication was issued in October, 2009 for participants in the MIP plan. Exhibit 4. See page 18 where MPSERS again uses oversize type to make clear how the pension is calculated and the use of the 1.5% multiplier.

2.

These statements were clear and unequivocal. Individual public school employees were told to assume that the promises contained in the Publications was the truth. They were told that their retirement would be based upon Final Average Compensation times 1.5% times years of service *at the time of retirement*. The promise was specific and express; it said that *when the employee retired*, their retirement formula would be as it was described in the Publications.

The specific nature of the promise is significant. The Publications described what would happen at some unknown point in the future. But they were very clear; the employee was promised that, when they retired, their multiplier would be 1.5%. This was a promise of future conduct; it was an assurance of what would happen when the employee retired. The promise was not capable of being fulfilled immediately; it had to await the employees decision to retire.

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3.

No part of these Publications told anyone that the retirement terms were subject to change at will. Throughout the Publications, there are references to the importance of planning for future retirement. Exhibit 2, page 3; Exhibit 3, page 6; Exhibit 4, page 6. Public school employees were expected to rely, and did rely, on the promises made by the State of Michigan as expressed by MPSERS. Important career decisions were likely made based on the legitimate expectations of public school employees regarding the future provision of retirement pension and benefits. As is argued ahead, the "disclaimers" are not adequate because they do not warn that specific terms might change; indeed, they do not warn that any terms may change.

B. Retirement is Contractual

1.

(a)

Since the adoption of the 1963 Constitution, the law has recognized that public pensions are contractual obligations and not mere gratuities. Before 1963, it had been the general rule that pensions granted by public authorities were not contractual obligations but gratuitous allowances which could be revoked at will by the authority because the pensioner was not deemed to have had any vested right in their continuation. See *Attorney General v Connolly*, 193 Mich 499; 160 NW 581 (1916); *Brown v Highland Park*, 320 Mich 108; 30 NW2d 798 (1948) and *Van Coppenolle v Detroit*, 313 Mich 580; 21 NW2d 903 (1946).

The question was debated during the 1962-1963 Constitutional Convention. Delegates supported a rejection of the "gratuity" precept and chose instead to recognize that pension benefits were contractual.

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"MR. VAN DUSEN: Mr. Chairman and members of the committee, this proposal by the committee is designed to do 2 things: first, to give to the employees participating in these plans a security which they do not now enjoy, by making the accrued financial benefits of the plans contractual rights. This, you might think, would go without saying, but several judicial determinations have been made to the effect that participants in pension plans for public employees have no vested interest in the benefits which they believe they have earned; that the municipalities and the state authorities which provide these plans provide them as a gratuity, and therefore it is within the province of the municipality or the other public employer to terminate the plan at will without regard to the benefits which have been, in the judgment of the employees, earned.

"Now, it is the belief of the committee that the benefits of pension plans are in a sense deferred compensation for work performed. And with respect to work performed, it is the opinion of the committee that the public employee should have a contractual right to benefits of the pension plan, which should not be diminished by the employing unit after the service has been performed."

1 Official Record, Constitutional Convention 1961, 770-771. Cited in *Advisory Opinion re Constitutionality of 1972 PA 258*, *supra*, 389 Mich at 662-663. See also *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 311-312; 806 NW2d 683 (2011).

(b)

The product of the Convention debates was Article IX § 24 of the Constitution. That provision states:

"The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

"Financial benefits, annual funding. Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities."

Const 1963, Art 9 § 24

Pension benefits which have already accrued are, unquestionably, contractual. But promises were also repeatedly made regarding a future benefit. In fact, the 1990 booklet

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explicitly states that "Benefits are safeguarded by the Michigan Constitution (Article IX, Section 24)." Exhibit 1, page 1. These promises are, as a matter of law, not mere gratuities. They are enforceable as contracts.

2.

(a)

Although Michigan has more than 500 local school districts, education is a function of the State.

"It has been repeatedly recognized by this Court that the control of the public school system is a State matter, vested by the Constitution in the legislature. In *MacQueen v. City Commission of City of Port Huron*, 194 Mich 328, 336, it was said:

"Fundamentally, provision for and control of our public school system is a State matter, delegated to and lodged in the State legislature by the Constitution in a separate article entirely distinct from that relating to local government. The general policy of the State has been to retain control of its school system, to be administered throughout the State under State laws by local State agencies organized with plenary powers independent of the local government with which, by location and geographical boundaries, they are necessarily closely associated and to a greater or less extent authorized to cooperate. Education belongs to the State."

"In *Child Welfare Society of Flint v. Kennedy School District*, 220 Mich 290, 296, the Court, after referring to certain provisions of the State Constitution, said, in part:

The legislature has entire control over the schools of the State subject only to the provisions above referred to. The division of the territory of the State into districts, the conduct of the school, the qualifications of teachers, the subjects to be taught therein are all within its control.

"In *Attorney General v. Lowrey*, 131 Mich 639, 644, it was said:

"The school district is a State agency. Moreover, it is of legislature creation. It is true that it was provided for in obedience to a constitutional requirement; and, whatever we may think of the right of

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the district to administer in a local way the affairs of the district under the Constitution, we cannot doubt that such management must be in conformity to the provisions of such laws of a general character as may from time to time be passed, and that the property of the district is in no sense private property, but is public property, devoted to the purposes of the State, for the general good, just as almshouses and courthouses are, although confided to local management, and applied to uses which are in a sense local, though in another sense general.”

Imlay Township Primary School Dist v State Board of Education, 359 Mich 478, 483-484; 102 NW2d 720 (1960).

The Legislature has delegated much of the education function through the School Code, MCL 380.1 *et seq.* And it has required public school employers to bargain collectively with representatives of their employees through the Public Employment Relations Act, MCL 423.201 *et seq.* But the Legislature has preempted the field with regard to basic retirement.

(b)

The State of Michigan has functionally fully occupied the field regarding public school employee retirement. Although retirement is a mandatory subject for bargaining under the Public Employment Relations Act, MCL 423.201 *et seq.*, *Wayne County*, 26 MPER ¶ 22; 2012 WL 4859082 (MERC, 2012), it is highly unusual for a public school employee collective bargaining agreement to include provisions regarding basic retirement. The reason is that the School Employees Retirement Act fully addresses basic retirement.

“State law preempts a municipal ordinance in two situations: (1) where the ordinance directly conflicts with a state statute or (2) where the statute completely occupies the field that the ordinance attempts to regulate. (Citation omitted) A direct conflict exists when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits. (Citation omitted)”

Czymbor's Timber, Inc v City of Saginaw, 269 Mich App 551, 555; 711 NW2d 442 (2006).

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The Retirement Act, MCL 38.1301 *et seq.*, occupies the field with regard to basic terms and conditions of teacher retirement. Parties to a collective bargaining relationship may bargain improvements or incentives which are better than basic retirement. *Jurva v Attorney General*, 111 Mich App 595; 315 NW2d 178 (1981), *aff'd*, 419 Mich 209; 351 NW2d 813 (1984) (incentive to retire early held not to conflict with retirement statute). However, basic retirement terms have been established by the Legislature.

C. Enforcement of Contract

The State of Michigan has made express promises regarding retirement. These promises are contractual in nature and may be enforced.

1.

A contract of employment may arise through the unilateral actions of the employer.

“Generally, employment contracts are unilateral and may be accepted only by performance. *In re Certified Question*, 432 Mich 438, 445-447; 443 NW2d 112 (1989); *Cunningham v 4-D Tool Co*, 182 Mich App 99, 106-107; 451 NW2d 514 (1989).

“A unilateral contract is one in which the promisor does not receive a promise in return as consideration. 1 Restatement Contracts, §§ 12, 52, pp 10-12, 58-59. In simplest terms, a typical employment contract can be described as a unilateral contract in which the employer promises to pay an employee wages in return for the employee’s work. In essence, the employer’s promise constitutes the terms of the employment agreement; the employee’s action or forbearance in reliance upon the employer’s promise constitutes sufficient consideration to make the promise legally binding. In such circumstances, there is no contractual requirement that the promisee do more than perform the act upon which the promise is predicated in order to legally obligate the promisor. [*Certified Question, supra*, at 446, citing *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich. 579, 630-631; 292 NW2d 880 (1980) (separate opinion of RYAN, J).]”

Sniecinski v Blue Cross & Blue Shield, 469 Mich 124, 138 fn 9; 666 NW2d 186 (2003).

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A unilateral contract is "...is one in which the promisor does not receive a promise in return as consideration." *In re Certified Question*, 432 Mich 438, 446; 443 NW2d 112 (1989), citing 1 Restatement Contracts, §§ 12, 52, pp 10-12, 58-59. And that is what occurred here.

Plaintiffs do not rely on the "legitimate expectations" which were certainly formed as a result of the Publications. Plaintiffs acknowledge the conclusion of this Court in *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 531; 473 NW2d 652 (1991), in which the Court declined to extend that doctrine to employee compensation. However, the Court has repeatedly made clear that express promises may be enforced whether written or otherwise:

"While the policy manual legitimate expectations analysis of *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980), may have in practice obscured that portion of the opinion dealing with a contract arising from an express agreement, oral or written, it is clear that the *Toussaint* majority held both that a provision of an employment contract providing that an employee shall not be discharged except for cause is legally enforceable and that the contract may be established in alternative ways. According to *Toussaint*, formation may be "either by express agreement, oral or written, *or* as a result of an employee's legitimate expectations grounded in an employer's policy statements." *Id.*, p 598 (emphasis added).

Bullock v Auto Club of Mich, 432 Mich 472, 480; 444 NW2d 114 (1989)

See also *Rood v General Dynamics Corp*, 444 Mich 107, 117 fn 17; 507 NW2d 591 (1993):

"Contracts are often spoken of as express or implied. The distinction involves, however, no difference in legal effect, but lies merely in the mode of manifesting assent. Just as assent may be manifested by words or other conduct, sometimes including silence, so intention to make a promise may be manifested in language or by implication from other circumstances, including course of dealing or usage of trade or course of performance." 1 Restatement, Contracts, 2d, § 4, comment a, p 14."

2.

The State of Michigan issued Publications which contained clear and express promises. There was nothing vague about what the State said. Retirement *would be determined* by a formula which contained a multiplier of 1.5%. The Publications were intended to do more than

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offer suggestions. They were clear and unequivocal promises. It is hard to imagine a statement more certain and clear than "your retirement formula is...". Any reasonable person reading the Publications would be left with the impression that the State had made a promise; that the promise was a retirement based on the described formula.

A person choosing to enter employment as a public school employee could accept the offer of employment based, in part, on the promises made by the State regarding retirement. There was no formality required; the State made an offer, the employee accepted. The offer was, in essence, "become a public school employee and you will receive retirement on these terms." The offer was unilateral; the acceptance was unilateral. But a contract was formed.

A contract was formed because the public school employee agreed to begin work on the assumption that their retirement, when eligible, would be based on the formula that was described in the Publications. The individual employee also agreed to begin work on the assumption that they would not have to increase their payments in order to keep the formula that was promised.

What has happened here is that a material term of the contract has been changed. This is no different than the purchaser of a car being told that they must pay a monthly stipend to continue in effect their warranty coverage they were promised when the car was delivered.

D. Disclaimers Inadequate

1.

The Court of Appeals rejected Plaintiffs' assertion that a contract was breached because, it held, the Publications contained disclaimers that were sufficient to prevent the creation of a contract regarding future conduct. In essence, the Court said, the State of Michigan did not make any promise as to what it might offer in the future. Vested retirement is protected by the

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Article 9 § 24 of the Constitution. But the terms of future retirement are not protected. The problem with this analysis is that it ignores both the text of the promise and the text of the disclaimer.

2.

(a)

The promises made by the Publications are beyond explicit. They are presented in a manner designed to leave no doubt whatsoever as to the terms of retirement. The use of oversized type and clever graphics was intentional. The Publications were intended to reassure the reader that retirement would be available; that the terms of the retirement would be as stated; that the multiplier would be 1.5%. The clarity of the Publications cannot be ignored. Specifically, the employee was told:

“Your Retirement Plan provides a benefit that is determined by a formula. The formula is your final average salary times 1.5% (.015) times your total years of service credit.” Exhibit 1, p. 7

(b)

The creation of a contract is determined by the “objective test.”

“Otherwise stated, to determine whether there was mutual assent to a contract, ‘we use an objective test, ‘looking to the expressed words of the parties and their visible acts,’” *Rowe* at 640, quoting *Goldman v Century Ins Co*, 354 Mich 528, 535; 93 NW2d 240 (1958), and ask whether a reasonable person could have interpreted the words or conduct in the manner that is alleged. Thus, we begin our analysis by looking “to all the relevant circumstances surrounding the transaction, including all writings, oral statements, and other conduct by which the parties manifested their intent.” *Rowe* at 641.”

Rood v General Dynamics Corp, 444 Mich 107, 119 (1993).

A review of the Publications requires the conclusion that a reasonable person would believe what they were told – “your retirement will be determined by the following formula.”

The Publications expressed clear and precise promises: there would be retirement allowances

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for public school employees; the retirement allowances would be computed using a 1.5% multiplier; that this would apply *at the time of retirement*. A contract exists because a reasonable person would conclude that the Publications meant what they said.

(c)

The promise that was made related to future conduct. The Publications do not explain what the person will receive presently. Retirement is, by definition, paid at a point in the future. The Publications, then, make specific promises regarding the future conduct of the State of Michigan. "Your retirement will..." is intended to describe what retirement will be *when the person ultimately retires*. In other terms, the State of Michigan represented what the retirement formula would be in the future.

3.

(a)

The Court of Appeals did not dispute that promises were made. It relied, however, on the various disclaimers contained in the Publications:

"Importantly, the disclaimers contained within each of the documents plainly demonstrates that the Retirement System manifested no intent to be contractually bound by the formula and clearly warned that pensions were a product of legislation, which was subject to change at any time. These same disclaimers also compel a finding that AFT's claim for breach of implied contract must fail."

J. apx. 77a; slip op., 11.

However, the disclaimers are inadequate to inform a reasonable person that the promises were illusory, were not permanent or were not intended to be promises at all.

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(b)

The disclaimers here are neither explicit nor clear. When compared to disclaimers found adequate by this Court or required by statute, the statements do not serve to disclaim a promise.

(i)

Perhaps the disclaimer that is most supportive of the conclusion reached by the Court of Appeals is that found in Exhibit 1, p. 3. Titled "Disclaimer", the publication states, in pertinent part, "However, information in this booklet is not a substitute for the law. If differences in interpretation occur, the law governs. The law may change at any time altering information in this booklet." Plaintiffs concede that this provides notice to the reader that "the law may change." But that statement is inadequate when compared to the clear and unequivocal representations to the contrary.

(ii)

The Publications do not inform the reader that the promises made are illusory and should not be believed. Plaintiffs respectfully strongly disagree with the conclusion of the Court of Appeals that "The pamphlets and brochures were simply an informational explanation of the then-existing formula..." J. apx. 77a; slip op., 11. The Publications were explicit promises. Public school employees were expected to believe what they were told. And they could believe what they were told.

(iii)

Compare the disclaimer here to those found in the principal cases relating to the "legitimate expectations" doctrine arising from *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980) and its progeny. [As noted, Plaintiffs do not rely that theory to support their claims as this Court has declined to apply it to matters involving

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employee compensation. *Dumas v Auto Club Insurance Association, supra*, 437 Mich 521, 531 (1991)] Disclaimers in such cases are effective because they disclaim even the existence of a contract; because they warn that the employee is "at will."

In *Lytle v Malady*, 458 Mich 153, 162; 579 NW2d 906 (1998) the disclaimer, found adequate, said: "The Company reserves the right to terminate employees without assigning cause; therefore, the employee serves at the will of the employer." And further stated that "the contents of this booklet are not intended to establish . . . any contract between . . . [the employer] and any employee, or group of employees."

In *Heurtebise v Reliable Business Computers, Inc.*, 452 Mich 405, 413; 550 NW2d 243 (1996) the disclaimer stated (capital letters in original):

"It is important to recognize and clarify that the Policies specified herein do not create any employment or personal contract, express or implied NOTWITHSTANDING ANY OF THE SPECIFIC POLICIES HEREIN, EACH EMPLOYEE HAS THE ABSOLUTE RIGHT TO TERMINATE HIS/HER OWN EMPLOYMENT AT ANY TIME, WITHOUT NOTICE, AND FOR ANY REASON WHATSOEVER, AND THE COMPANY HAS THE SAME RIGHT."

In *Rood v General Dynamics Corp.*, 444 Mich 107, 121 (1993), the disclaimer applicable to the claim of Shippers stated:

"The contents of this manual are presented as a matter of information only. While Sealed Power believes wholeheartedly in the plans, policies and procedures described here, they are not conditions of employment. Sealed Power reserves the right to modify, revoke, suspend, terminate, or change any or all such plans, policies, or procedures, in whole or in part, at any time, with or without notice. The language used in this manual is not intended to create, nor is it to be construed a contract between Sealed Power and any one or all of its employees."

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(iv)

Disclaimers required by statute, e.g. MCL 440.2316(2), are required to be “sufficiently conspicuous” to warn a consumer that a warranty is disclaimed. See e.g. *Davis v LaFontaine Motors, Inc*, 271 Mich App 68, 77; 719 NW2d 890 (2006) (warranty disclaimer titled “IMPORTANT BUYER INFORMATION” (sic) was adequate to preclude warranty).

4.

The Court should conclude that the Court of Appeals incorrectly elevated the text of the disclaimer in the Publications to something it is not. The disclaimer is devoid of substance and meaning. It is a vacuous statement which provides no warning that the reader should not believe the publication’s statements.

It is a challenge to conclude that the disclaimers here are “sufficiently conspicuous” or even sufficient at all. “The law may change” is not a warning; it is a speculation. No explanation is offered regarding what such changes might accomplish. And, contrary to the supposed disclaimer, the reader is left with the distinct, and justifiable, impression that the terms of retirement are as promised and will be honored.

It would be anomalous to find that the common law was more forgiving than statutes when reviewing the text of the disclaimer here. The Court should conclude, therefore, that the Publications did not disclaim either the existence of a contract or a promise of future conduct. The Court should find that a contract was created but that it was breached. PA 300 modifies the terms of the contract by requiring public school employees to pay to keep what they were promised. That is a breach of the promise and the contract that contained it.

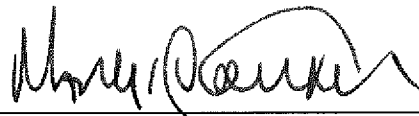
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CONCLUSION

This Court should conclude that 2012 PA 300 unconstitutionally takes the value of interest earned on contributions made for post employment retiree health care; that the Act did not cure the defect noted in AFT Michigan, supra; that the Act breaches a promise made to public school employees by requiring them to pay a substantial sum in order to keep the retirement terms they were promised. The decision of the Court of Appeals should be reversed.



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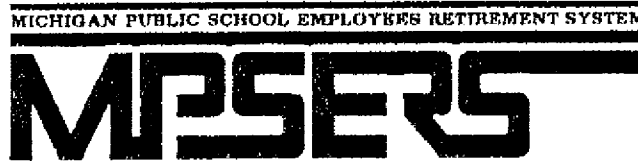
EXHIBIT 1

MPSERS, Introduction

AN INTRODUCTION TO YOUR RETIREMENT PLAN

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Handwritten notes in a box:
Lansing
OP 1
OP 3
OP 7
OP 12

AN INTRODUCTION TO YOUR RETIREMENT PLAN

F O R E W O R D

As a member of the Michigan Public School Employees Retirement System you can look forward to someday qualifying for a pension yourself, and enjoying protection for your loved ones as you move through your career. With trends toward retiring earlier, and living longer, most likely you will be spending a significant portion of your lifetime in retirement. The earlier you begin your personal retirement planning--the more rewarding and financially secure will be your later years.

A few minutes spent reading through this booklet will be time well spent, and will undoubtedly leave you with many positive feelings about the dynamic System of which you are a part.

The Retirement System is here to serve you. If anything is unclear or you have additional questions please contact us.

DISCLAIMER

This booklet was written as an introduction to your retirement plan. You should find it very helpful in the early stages of your planning for retirement. It is designed to answer commonly asked questions in a simple and easy to understand style. However, information in this booklet is not a substitute for the law. If differences of interpretation occur, the law governs. The law may change at any time altering information in this booklet.

There are other publications available providing greater detail on your retirement plan benefits. Additionally, Retirement System staff will respond to your written questions or set up an appointment to visit with you at our office.

WELCOME TO THE MICHIGAN PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM (MPERS)

INTRODUCTION

The following information will familiarize you with the benefits available to you now and in the future as a member of the Michigan Public School Employees' Retirement System. This booklet explains the differences of the Member Investment Plan (MIP) and the Basic Plan and provides you with information essential to making informed decisions.

BENEFITS OF MEMBERSHIP

You are a member of this Retirement System the first day you work in public schools. You are also covered by Social Security. Participation in both programs is required by law. These programs can be expected to someday provide you with a significant portion of your retirement income.

You belong to a group of over 270,000 active employees and 80,000 retirees. As of January 1990 over \$12 billion in invested assets have been set aside for present and future retirement benefits.

The Michigan Public School Employees Retirement System is a state-wide retirement plan. All full-time, part-time, teaching and non-teaching public school employees, including short term and interim employees are members, except for a few specific groups exempt by law. Certain full-time university employees have the choice of belonging to an alternate retirement plan (typically TIAA-CREF). If you work for several different MPERS schools during your career you remain covered by the same retirement plan.

The retirement law is under continuous review, and the Legislature has established an impressive record for improving benefits while maintaining the financial soundness of the Plan. Benefits are safeguarded by the Michigan Constitution (Article IX, Section 24).

All members must belong to either the Member Investment Plan (MIP) or the Basic Plan. Basic Plan members do not make contributions. MIP members make contributions on a tax-deferred basis and are entitled to the following additional benefits:

- * Larger pension
- * Yearly increases throughout retirement to help counter inflation
- * Earlier survivor protection
- * Earlier retirement eligibility

A nonrefundable employer contribution and a yearly legislative appropriation is also provided to fund MIP and Basic Plan benefits.

You are automatically a member of the Member Investment Plan (MIP), if you (1) first became an employee after December 31, 1989; or, (2) are a returning employee who did not work in public schools from January 1, 1987 through December 31, 1989. Approval is currently being sought from the Internal Revenue Service (IRS) for an "exploration period" to give you

an opportunity to compare the differences between the two plans. If the IRS grants approval, at the end of your exploration period you will have a time period during which you may elect to discontinue participation in the MIP. **This election will be irrevocable.** Financial planning may assist you in making an informed decision as to which plan best meets your objectives. Table 1 (page) shows a comparison of the MIP and Basic Plan benefit differences.

Members belonging to the Basic Plan do not have contributions deducted from their wages. Tax deferred contributions are deducted from a MIP member's gross wages received on a school fiscal year basis (July 1 through the following June 30). Employees who elected the MIP on or before December 31, 1989 contribute a single rate of 3.9% of gross wages. Those who automatically became enrolled in the MIP have contributions deducted according to the following graduated schedule:

<u>Wages</u>	<u>MIP Contribution Rate</u>
First \$5,000	3% of gross wages
\$5,001 through \$15,000	3.6% of gross wages
Over \$15,000	4.3% of gross wages

RETIREMENT PLAN CHOICE MIP VS. BASIC

Because your decision will be **irrevocable** and involves life planning considerations, you should make this decision carefully and with full understanding of what each plan provides. The next few pages describe the major features of the MIP and Basic Plan, and identify those benefits that are available under either plan.

● When is the earliest age I can retire?

MIP members may retire at any age after 30 years of service (some restrictions may apply if a member has 30 years of service prior to age 46.)

BASIC members may retire no earlier than age 55 with 30 years of service.

MIP members may retire at age 60 or older with a minimum of 5 years of credited service under certain conditions.

Both plans provide regular retirement benefits payable at age 60 with 10 years of service and deferred retirement benefits payable at age 60 with 10 or more years of credited service

Reduced retirement as early as age 55 with 15 or more years of credited service under certain conditions is also provided regardless of plan choice.

● **Is there a difference in the amount each plan will provide at retirement?**

With MIP your initial pension is greater since it is calculated using your highest 3 consecutive years salary. (See Table 2)

The BASIC Plan pension issuing your highest 5 consecutive years salary. (See Table 2)

● **Will I receive increases in my allowance after I retire?**

With MIP your benefits will automatically increase, helping you to cope with inflation. After your first year of retirement you'll receive a yearly benefit increase of 3% of your initial pension. (See Table 2)

For those who elect the BASIC Plan after the exploration period there is no provision for post-retirement increases.

● **What happens if my death occurs prior to retirement?**

With MIP a survivor benefit is automatically payable after 10 years of credited service

The BASIC Plan provides for a survivor benefit after 15 years.

● **Is health insurance available when I retire?**

Health, dental, vision and hearing insurance will be available for you and your eligible dependents regardless of Plan choice.

? deferred retirement.

What about 13th paycheck?

Note 10/1/12 p. 4

TABLE 1: A GRAPHIC COMPARISON MIP VS. BASIC

BENEFIT	MIP	BASIC
Age and Service Requirements for Retirement	Any age with 30 or more years Age 60 with 5 or more years under certain conditions	Age 55 with 30 or more years Age 60 with 10 or more years
Benefit Formula Averaging Period	3-year salary average x 1 1/2% (.015) x years of service	5-year salary average x 1 1/2% (.015) x years of service
Annual Increase	Guaranteed yearly increase of 3% of the 1st year's benefit	No guaranteed increases
Survivor Protection	Survivor eligible for benefits after 10 years of service (5 years at age 60)	Survivor eligible for benefits after 15 years of service (10 years at age 60)

Both plans provide 10 year vesting.

Both plans provide reduced retirement as early as age 55 with 15 or more years of service under certain conditions.

Some restriction may apply if a member has 30 years of service prior to age 46.

With service credit in each of the 5 school years immediately preceding retirement.

Table 2. The MIP provides a larger pension for two reasons: first, your pension is based on a higher salary average; and, second, the MIP guarantees an annual increase. The MIP increase is equal to 3% of your first year's pension and is payable beginning in your second year of retirement and each following year. The MIP increase provides significant protection against inflation.

Table 2

	MIP		Basic Plan
Best consecutive years' wages	Not Applicable		\$24,900
	Not Applicable		\$26,100
	\$27,500		\$27,500
	\$28,900		\$28,900
	\$30,500		\$30,500
Average	$\div 3 =$ \$28,967		$\div 5 =$ \$27,580
Multiply by .015	\$435		\$414
Multiply by years of credited service for annual benefit (assume 30 for this example)		Year on *Retirement*	
	\$13,050	1st	\$12,420
	\$13,441	2nd	\$12,420
	\$13,883	3rd	\$12,420
	\$14,224	4th	\$12,420
	\$14,616	5th	\$12,420
	.	.	.
	.	.	.
	.	.	.
	.	.	.
	\$23,620	28th	\$12,420

Suggest
5
10
15
20 - yrs of retirement
including cumulative Amount

"THE EXPLORATION PERIOD"
MIP VS. BASIC?

Approval is currently being sought from the IRS for an exploration period to give you an opportunity to learn about each plan. If approval is granted you will have a time period during which you may elect to discontinue participation in the MIP. To make an informed decision between the MIP and Basic Plan you should consider the following:

- * RETIREMENT NEEDS
- * EARLIER RETIREMENT ELIGIBILITY
- * EARLIER SURVIVOR PROTECTION
- * INCOME DIFFERENCES
- * ALTERNATIVE INVESTMENTS

DISCONTINUING YOUR INVESTMENT IN THE MEMBER INVESTMENT PLAN (MIP) AND ELECTING THE BASIC PLAN

To begin the process to discontinue participation in the MIP and elect the Basic Plan you need to get the appropriate forms available from any MPSERS school payroll office. Discontinuation of the MIP cannot occur sooner than three (3) years nor later than four (4) years from the end of the school year in which you first made contributions to the Member Investment Plan.

The annual Member's Statement of Account will state the earliest and the latest dates you may discontinue the MIP. The following table illustrates the dates discontinuation may be made, based on contributions first made to the Member Investment Plan.

Date MIP contributions first made:

You are eligible to discontinue between:

Jan. 1, 1990 - June 30, 1990
July 1, 1990 - June 30, 1991
July 1, 1991 - June 30, 1992
July 1, 1992 - June 30, 1993
July 1, 1993 - June 30, 1994

July 1, 1993 - June 30, 1994
July 1, 1994 - June 30, 1995
July 1, 1995 - June 30, 1996
July 1, 1996 - June 30, 1997
July 1, 1997 - June 30, 1998

→
your → The election to discontinue participation in the MIP is irrevocable. If you discontinue the MIP you are no longer entitled to the additional benefits of MIP and become a member of the Basic Plan. No further MIP contributions will be deducted and a refund of your MIP contributions plus interest will be processed 9 months following discontinuation.

Refunds may be eligible to be rolled over into another tax-deferred plan or an Individual Retirement Account (IRA) which would continue your tax deferral plus avoid the 10% penalty for early withdrawal. You may wish to contact the Internal Revenue Service or a tax consultant for information on how to avoid a tax penalty.

BENEFIT PROVISIONS

PENSION FORMULA

Your Retirement Plan provides a benefit that is determined by a formula. The formula is your final average salary times 1.5% (.015) times your total years of service credit (see Table 2 on page 4). Each year a Member's Statement of Account is provided which shows your wages, service credit, contributions, beneficiary designation, and other timely information.

SERVICE CREDIT

One year of service credit is earned by performing Michigan public school work for 170 days at 6 or more hours per day within the school fiscal year of July 1 through the following June 30. No more than one year of credit may be earned within one school fiscal year, and proportionate service credit is granted for less than full-time employment. (Example: An employee working 3 hours a day for 170 days earns one-half year of credit. Working 6 hours a day for 85 days also equates to one-half year of credit.)

Retirement credit may also be bought. Buy-in credit includes:

- * Universal buy-in credit
- * Maternity/paternity/child rearing time
- * Active duty military service
- * Out-of-System public school employment
- * Non-public school employment
- * State of Michigan employment
- * Sabbatical leave

Buy-in credit may be purchased any time during your employment. Except for State of Michigan service, buy-in credit is **not** recognized for computing a retirement pension until 10 years of credited service has been earned. A buy-in is less costly when purchased early in a member's career.

VESTING

Members are vested with 10 years of credited Michigan Public School Employees' Retirement System service. This means that if you leave public school employment before age 60 and have at least 10 years of credited service you will be eligible to begin receiving a pension the month following your 60th birthday, plus participate in the group health, dental, vision, and hearing insurance plans.

MINIMUM RETIREMENT AGE

The earliest age to become eligible for a pension depends upon whether you are in the MIP or the Basic Plan and your credited service. A MIP member with 30 years of credited service may retire with full benefits as early as age 46. MIP members who are age 60 or older may retire with at least 5 years of service under certain conditions.

*Should mention
substantiated deductions
in benefits.*

DISABILITY BENEFITS

Duty and Non-Duty Disability pensions are provided under certain conditions. Duty Disability requires that the condition is job related and weekly Worker's Disability Compensation is paid. No minimum amount of service credit is required for a Duty Disability pension.

→ To receive a Non-Duty Disability pension at least 10 years of credited service is required. It is not required that the disabling condition be job related, nor, is it required that weekly Workers' Disability compensation be paid. (Time limits for application apply.)

SURVIVOR BENEFITS

→ Survivor pensions are provided if a member dies before retirement. Duty Death benefits are paid if the death is job related and weekly Worker's Disability Compensation is paid. No minimum amount of service credit is required.

To provide a Non-Duty Death pension at least 10 years of credited service is required for a MIP member, and 15 years for a Basic Plan member.

TERMINATION OF EMPLOYMENT

If you terminate public school employment you may take a refund of your contributions. A refund cancels service credit. If you return to public school employment and did not exercise your election to discontinue participation in the MIP, you remain in the Member Invest Plan (MIP).

If MIP - requires repayments of refund plus interest

OTHER IMPORTANT INFORMATION

Each new employee must complete a **Member Enrollment Form, R226C**, which is available from your employer. This form is used to designate your beneficiary. The beneficiary you designate will receive a refund of your contributions and interest if death should occur while still working, and there is no one eligible to receive a survivor's pension. It is important that you keep your beneficiary designation up to date. The annual Member's Statement of Account indicates your current beneficiary designation.

If you later wish to change your beneficiary because of marriage, divorce, death, birth, adoption, or personal preference, you may do so by completing a **Member Information Form, R5105C**. This form is also used to update information about yourself such as a name change because of marriage or divorce. The form may be obtained from either your employer or the Retirement System.

The Michigan Public School Employees Retirement System conducts ongoing informational seminars and workshops at convenient locations statewide. Flyers listing the dates and locations of these meetings are mailed to schools for posting on employee bulletin boards; or, you may call the Retirement office for information.

In addition the Retirement System produces and distributes a variety of audio-visual and written publications available through your employer or from the Retirement System.

CONCLUDING THOUGHTS

- * You are automatically a member of the Member Investment Plan (MIP). During the exploration period you should do all you can to learn about the MIP and Basic Plan. At the end of your exploration period you have a one-time opportunity to elect to discontinue participation in the MIP (if approved by the Internal Revenue Service).
- * The Retirement System recommends that you carefully consider your future retirement needs. The plans and decisions made today regarding your retirement can directly influence your future. Be sure the decisions you make will help fulfill your life planning objectives.

QUESTIONS AND ANSWERS

- Q1. Are all public school employees required to belong to the Michigan Public School Employees Retirement System (MPSERS)?
- A. Yes, all employees, including part-time, temporary, and intermittent employees are members, except for a few specific groups exempt by law (e.g. MPSERS retirees).
- Q2. How long must I work before I will be vested?
- A. Members are vested with 10 years of credited MPSERS service. This means that if you leave public school employment before age 60 and have at least 10 years of credited service you will be eligible to receive a pension the month following your 60th birthday. (See page 3 for further eligibility information.)
- Q3. May a member retire at age 55 with less than 30 years of service?
- A. Yes, a permanently reduced pension is available as early as age 55 with 15 or more years of credited service under certain conditions. (See page 3 for further eligibility information.)
- Q4. My spouse also works in public schools. Will we both be able to receive a pension?
- A. Yes, providing each of you fulfill the eligibility requirements.
- Q5. If I die and my spouse receives a survivor pension, is health insurance available for my spouse and children?
- A. Yes, for your spouse. Your children are also eligible as long as they meet the dependency requirements.
- Q6. What happens to my MIP contributions if I die and no one is eligible to receive a survivor's pension?
- A. Your accumulated contributions along with interest would be refunded to your beneficiary or estate.
- Q7. If I become disabled while working as a school employee does the Retirement System provide a disability pension?
- A. Yes, if you are disabled because of a job related injury or accident and in receipt of weekly Worker's Disability Compensation. No minimum amount of service credit is required. If your disability is not job related, ten (10) years of credited MPSERS service is required. (Time limits for Application apply.)

Q8. How is service credit computed?

A. One year of service credit is earned by performing Michigan public school work for 170 days at 6 or more hours per day within the school fiscal year of July 1 through June 30. No more than one year of credit may be earned within one school fiscal year, and proportionate service credit is granted for less than full-time employment. (Example: an employee working three hours a day for 170 days earns one-half year of credit.)

Q9. Can I enhance my pension by purchasing additional retirement credit?

A. Yes

Q10. How long must I be employed before I can purchase buy-in credit?

A. Buy-in credit may be purchased any time during MPSERS employment. Except for State of Michigan service, buy-in credit is not recognized for computing a retirement allowance until 10 years of credited service has been earned. A buy-in is less costly when purchased early in a member's career.

Q11. Will there be money in the retirement fund when I get ready to retire and are my future benefits secure?

A. Yes, benefits are safeguarded by the Michigan Constitution.

Q12. If I choose to remain in the MIP, do I lose any of the benefits provided by the Basic Plan?

A. You automatically have all the benefits of the Basic Plan plus the enhanced benefits of the MIP.

} 13th pay day

Q13. If I choose to forfeit the MIP benefits by discontinuing participation in the MIP, may I leave my contributions on deposit and continue to earn the high rate of return?

A. No, if you forfeit membership in the MIP, your MIP contributions and interest must be refunded to you.

Q14. If I do not work long enough to qualify for a pension, can I receive a refund of my MIP contributions?

A. Yes, when you terminate your employment refunds may be rolled over into another tax-deferred plan or an Individual Retirement Account (IRA). You may wish to contact the Internal Revenue Service or a tax consultant for information on how to avoid a tax penalty.

Q15. If I leave public school employment after I am vested and take a refund of my contributions can I later reinstate the service forfeited by the refund?

A. Yes, service can be reinstated after a member returns for one (1) year of credited service and the amount refunded is repaid with interest. However, a return for two (2) years of credited service is required if you were separated from MPSERS employment for more than 60 months.

Q16. Can I receive a refund of my MIP contributions before I am eligible to discontinue participation in the MIP?

A. Yes, if you terminate employment. ("Discontinue participation" refers to a member forfeiting the MIP by electing the Basic Plan).

Q17. If I discontinue participation in the MIP and become a member of the Basic Plan and later leave public school employment—can I again participate in MIP if I return to MPSERS work?

A. No, your choice to forfeit the MIP is irrevocable.

Q18. Are all Michigan public school employees covered by Social Security?

A. Yes, this is a valuable additional benefit that you have by being a MPSERS member. Awareness of Social Security's benefits can assist you in your overall financial planning.

Q19. How should I decide which retirement plan is best for me?

A. To make an informed decision between the MIP and Basic Plan you should consider:

- (a) your retirement needs
- (b) earlier retirement eligibility
- (c) earlier survivor protection
- (d) income differences
- (e) alternative investments

To assist you with your decision MPSERS:

PRODUCES and distributes a variety of audio-visual and written publications available through your employer or from MPSERS

CONDUCTS ongoing informational seminars and workshops at convenient locations statewide

HAS TWO OFFICES to serve you—one in Lansing and one in Detroit.

If you wish to receive literature or materials on any of the following topics, please fill out this form and mail it to the address below.

CHECK APPROPRIATE BOX

- ☐ Guidelines booklet
- ☐ MPSERS Annual Financial Statement
- ☐ Member Enrollment Form, R226C
- ☐ Member Information Form, R5105C
- ☐ Refund Application Form, R215C

Buy-in Credit Applications:

- ☐ Universal buy-in credit
- ☐ Maternity/paternity/child rearing time
- ☐ Active duty military service
- ☐ Non-public school employment
- ☐ Public school employment
- ☐ State of Michigan employment
- ☐ Sabbatical leave

PLEASE PRINT

Name _____
Street _____
City _____ State _____ Zipcode _____

Mail to:

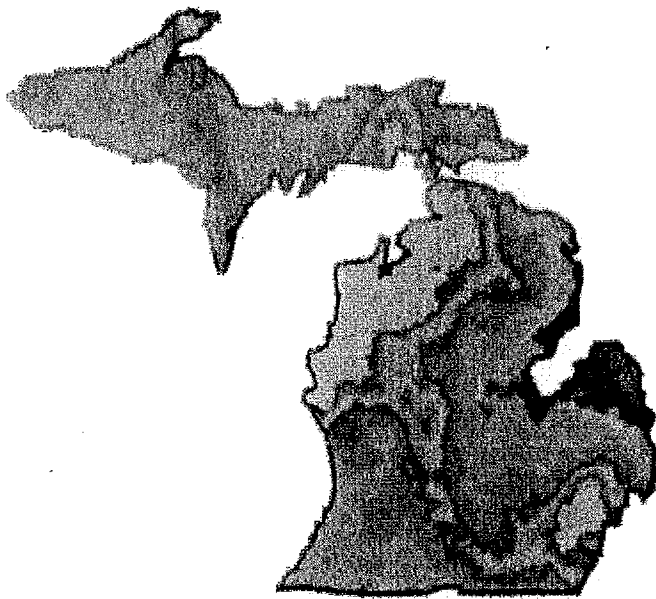
Michigan Public School Employees Retirement System
Post Office Box 30026
Lansing, Michigan 48909

EXHIBIT 2

MPSE 12.5

MICHIGAN PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM

MPERS



Retirement Guidelines

May 1997

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Introduction

Retirement. You look forward to it as a time to enjoy the good life you've earned. To enjoy retirement to its fullest, you need financial security. The State of Michigan established a retirement plan to begin building that security for you. This retirement plan, together with Social Security contributions and your personal savings, can help you ensure financial security during your retirement years.

The Michigan Public School Employees Retirement System (MPERS) retirement plan is designed to provide you with a monthly income, called a pension, when you retire. This plan also helps protect you and your family by providing health insurance and survivor benefits.

MPERS produced this book to guide you through the details of your retirement plan. On the following pages, you'll find answers to many of your questions about the plan:

- *How is my pension calculated and how much will I receive?*
- *What other retirement benefits will I receive?*
- *When can I start receiving my pension?*
- *What happens if I become disabled?*
- *What happens if I die before I receive my pension?*

Use the MPERS Retirement Guidelines throughout your career to help you plan for retirement. When you're ready to retire, use it to help you make benefit decisions.

Remember, this book is a summary of the main features of the plan and not a complete description. The operation of the plan is controlled by the Michigan Public School Employees Retirement Act (Public Act 300 of 1980, as amended). If the provisions of the Act conflict with this summary, the Act controls. In addition, most of the information contained in this booklet applies to members enrolled in the Member Investment Plan (MIP). Information for Basic Plan members is included in footnotes.

Please read this book carefully. Share the information with your family and save it for future reference.

You should contact MPERS periodically for updated versions.

For More Information

If you need more information about any Retirement Plan feature or program, please call MPERS's Fast Facts Information Line at 1-800-353-6932 or write to:

MPERS
P.O. Box 30673
Lansing, MI 48909-8103

Send all correspondence to this address.

All written requests for information should include your Social Security number and mailing address. You can change your address or request certain account-specific information by telephone, but you must provide sufficient information to verify your identity.

For assistance or to schedule an appointment with a retirement counselor, call MPERS at (517) 322-6000, Monday through Friday, 8:00 a.m. to 5:00 p.m., or contact one of the offices listed on the following page.

MPSERS has four offices

(See map on following page):

Main Office:

Central Office
General Office Building
State Secondary Complex
7150 Harris Drive, Lansing
(I-96 to Lansing Rd., Exit 98A, south to Canal Road)
Phone: (517) 322-6000
Fax: (517) 322-5928 or (517) 322-6643

Regional Offices:

Detroit City Office
State Plaza Building
1200 Sixth Avenue, Ste. P-120
Detroit
(off Lodge Freeway, M-10, Howard Street exit, one block west)
(313) 256-1400

Eastern Office
(Scheduled to open September 1, 1997)
1200 W. Huron Street (M-59)
(1/2 mile West of Telegraph Road)
Waterford, MI
(Parking entrance off Coleman Road. Turn north off M-59 at the overhead pedestrian walkway.)

Western Office
Ottawa Area ISD
13565 Port Sheldon Road
Holland
(six miles north of Holland)
(616) 399-6940, ext. 392 or 324

MPSERS Internet Home Page:

<http://www.michigan.state.mi.us/orshome/mpsers>

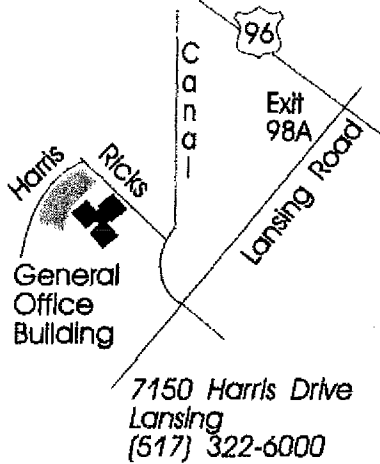
NOTE: All written correspondence and any payments for service credit purchases must be submitted to the Main Office in Lansing.

The MPSERS Traverse City office is closed. For information about retirement services near you, see Appendix F, page 63.

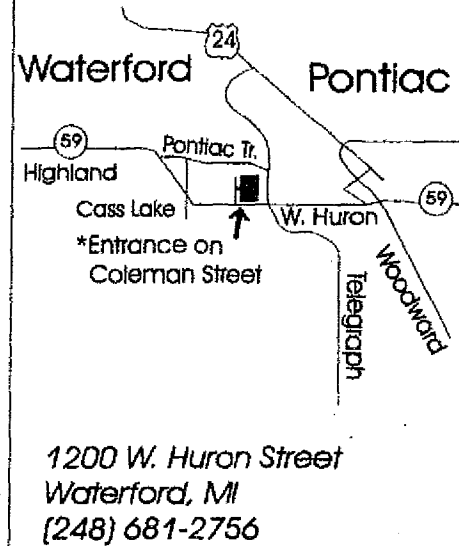
(The Oak Park office is available through August 15, 1997 at (248) 544-2874. For service after those dates please contact one of the offices listed above.)

For information about Pre-Retirement informational Meetings (PRIM)s and pre-scheduled individual counseling appointments available in your local area, see Appendix F, page 63.

Central Office

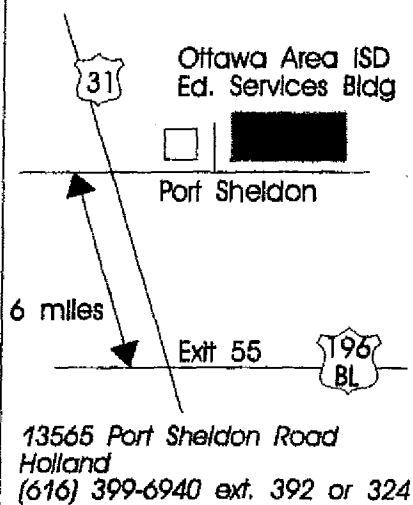


Eastern Office



Western Office

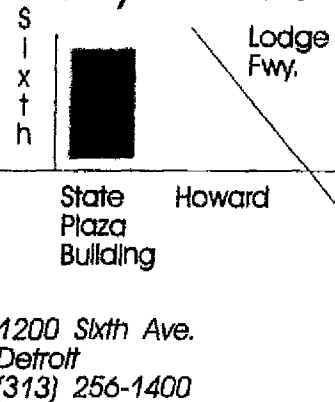
To Grand Haven



Fast Facts
Toll-Free
Information:

1-800-353-6932

Detroit City Office



MPERS

Correspondence Address:

MPERS
P.O. Box 30673
Lansing, MI 48909-8103

Retirement at a Glance

This chart gives you an overview of some of the MPSERS pension plan features and terminology. Refer to the individual sections for more detailed information.

Plan Participants.....Most employees of Michigan public schools*.

**For brevity's sake, the term "public schools" will apply to participating K-12 districts, intermediate school districts, district libraries, community colleges, universities and public school academies.*

Contributions.....Employers contribute a percentage of payroll on members' behalf. Members also make contributions to MIP, based on annual salary.¹

Retirement Eligibility.....- Any age with at least 30 years of service².

- At least age 60 with at least 10 years of service.

- At least age 60 with at least five years of service² and at least 0.1 year (102 hours) of credited service in each of the five school fiscal years immediately before your retirement effective date.

- At least age 55, with more than 15 but less than 30 years of credited service and at least 0.1 year (102 hours) of credited service in each of the five school fiscal years immediately before your retirement effective date.

Your pension is permanently reduced one-half percent for each month your retirement effective date precedes your 60th birthday.

Pension Formula.....Your final average compensation X 1.5% X years of service credit = your annual pension.

Service Credit.....The years you work in the Michigan public school system and any additional years of credit you buy.

Final Average Compensation.....The total compensation you earned in the consecutive 36 months when your compensation was highest, divided by the service credit you earned during that 36 months.³

Insurance Coverage.....Retirees and their eligible dependents may enroll in health, dental and vision plan coverage at retirement. Eligible beneficiaries may continue coverage after a retiree's death under certain circumstances.

¹ Basic plan members do not make contributions to the plan.

² Basic plan members can retire at age 55 with at least 30 years of service, or age 60 with at least 10 years of service.

³ For Basic plan members, the average is taken for the 60 consecutive months in which compensation was highest.

Participating in the MPSERS Plan

By Michigan law, participants in the MPSERS plan include all employees of K-12 public school districts; intermediate school districts; district libraries; some public school academies; tax-supported community colleges; and certain employees who became employed before January 1, 1996, by one of seven Michigan universities (Central, Eastern, Northern and Western Michigan Universities; Ferris State University; Lake Superior State University; and Michigan Technological University).

Note: As the Retirement System's name suggests, we will use the term "school" throughout this document to collectively describe all participating MPSERS agencies.

However, the following public school employees are **not** MPSERS members:

- a person who has retired from MPSERS and is receiving a pension, even if he or she returns to Michigan public school employment
- a person employed by a public school while enrolled as a full-time student in that system
- a full-time instructor or administrator of a community college or an eligible university who elected an optional retirement plan (such as TIAA/CREF) offered under Act No. 156 of the Public Acts of 1967, as amended
- an employee of an eligible university who was hired *after* January 1, 1996, and was not previously a MPSERS member
- a *new* employee of a library or museum hired *after* it separated from the school district
- a person who is working in the public school system only through a program resulting from the following acts:
 - Michigan Youth Corps Act (Act 69, P.A. 1983)
 - Job Training Partnership Act (JTPA) (Public Law 97-300)

- Michigan Opportunity and Skills Training (MOST) Program (Act 259, P.A. 1983)
- Michigan Community Service Corps Program (Act 259, P.A. 1983)
- Senior Community Service Employment Program (Public Law 89-73)
- the administration of any of these programs, unless he or she is employed by the school and was previously a MPSERS member
- an employee enrolled in a transitional public employment program
- a person enrolled in a federally funded neighborhood youth corps program or similar training program operated by an intermediate school district to prevent and/or rehabilitate high school dropouts
- a person working in a public school who is contracted by an outside company, rather than hired directly by the school
- a person working in a public school who is self-employed as an independent contractor.

When your participation begins

You become a MPSERS member and begin accruing credit toward a pension on the first day you work in the Michigan public school system.

When you begin employment, you complete a *Beneficiary Nomination* form to provide MPSERS with data to help determine the funding of your future retirement benefits. You also name a beneficiary, the person who will receive any appropriate survivor benefits if you die before retirement.

When your participation ends

You will participate in MPSERS throughout your Michigan public school employment. If you cease to be employed by a Michigan public school, you are no longer an active MPSERS member.

When you cease to be a member, you may withdraw your **personal** contributions, plus accumulated interest, provided you are not eligible to begin receiving a pension. This refund includes all payments and accrued interest for any additional years of credit you purchased. There is no provision for a partial refund. You may also leave your contributions on deposit. Interest will continue to accrue.

A refund forfeits all represented accrued service

If you are not eligible to receive an immediate pension but have 10 years of service credit when your participation ends, you are considered a vested deferred member. You may leave your contributions on deposit with MPSERS, where they will continue to earn interest. You can apply for a pension from MPSERS when you meet the age requirement. See *Qualifying for a Pension*, page 11.

Contributing To The Plan

The retirement plan is funded by contributions from public schools and employees and by the investment earnings on these contributions. All contributions are a funding source for the pension and do not result in benefits in addition to the pension. At the time of retirement, contributions are transferred to the pension reserve fund, from which monthly pensions are paid.

Each year, an actuary determines how much the public schools need to contribute to fund their portion of members' benefits. These contributions are not refundable to you or your employer.

Your contributions

In addition to the contributions your employer pays, MIP participants contribute a percentage of

their pre-tax salary to the MIP Fund. These contributions, which fund additional benefits, are posted to each member's individual account and credited each July 1 with compound interest at the rate of investment return the law specifies, based on your MIP account balance as of the previous July 1.

You receive an annual *Member's Statement of Account* showing your personal contributions and accrued interest. (See *Appendix B*, page 56.)

The interest rates MIP contributions earned through July 1, 1997 are:

Compounding Date	MIP Interest Rate	Compounding Date	MIP Interest Rate
July 1, 1988.....	16.3%	July 1, 1993.....	6.3%
July 1, 1989.....	8.2%	July 1, 1994.....	7.5%
July 1, 1990.....	10.2%	July 1, 1995.....	6.9%
July 1, 1991.....	8.5%	July 1, 1996.....	8.14%
July 1, 1992.....	7.4%	July 1, 1997.....	10.62%

Your MIP contribution rate varies according to the timing and circumstances of your MIP enrollment.

If you:

- elected the MIP before January 1, 1990; or
- were a Basic Plan participant who enrolled in the MIP by January 1, 1993;

you contribute 3.9 percent of your pre-tax salary.

If you are:

- a new member who began Michigan public school employment January 1, 1990 or later; or
- a returning member who did not work between January 1, 1987 and December 31, 1989;

you are an automatic MIP participant. Automatic participants make pre-tax contributions according to the chart below:

Automatic MIP Payment Schedule

Member's annual school fiscal year earned compensation	Annual amount of MIP Contribution
Not more than \$5,000	→ 3% of your compensation (up to \$150)
\$5,000 to \$15,000	→ \$150 plus 3.6% of your compensation between \$5,000 and \$15,000 (up to \$510)
More than \$15,000	→ \$510, plus 4.3% of your compensation over \$15,000

Pre-Tax Contributions

MIP contributions are tax-deferred, meaning they are deducted from your pay **before** taxes are calculated. Therefore, MIP contributions help reduce the amount of local, state and federal income taxes you pay while you're working.

You will pay federal income tax on your pension when you receive it. By law, your MPSERS pension is exempt from State and local income tax in Michigan.

Post-Tax Contributions

If you participated in the Contributory Plan before 1977, your after-tax contributions are credited to your "Other Employee Contributions" (OEC) plan member account.

In addition to your pre-1977 contributions, your OEC includes: payments for purchases of additional years of credit; repayment of refunds; MIP window buyback payments; and MIP contributions covering wages you earned during the MIP period if not reported to MPSERS by your employing school.

Six percent (6%) interest is credited annually on June 30 to your OEC account balance as of the previous June 30.

You receive an annual *Member's Statement of Account* showing your personal contributions, both OEC and pre-tax MIP, and accrued interest. (See Appendix B, page 56.)

Planning For Your Retirement

MPERS is the State agency that will process your retirement application and pay your pension. It will be your "partner in retirement" throughout your lifetime.

Qualifying for a Pension

To retire with a regular pension, you must meet minimum age and service requirements. You may also qualify for early retirement with a permanently reduced pension or defer your retirement until you meet the age requirement.

Regular retirement

You are entitled to a regular pension if you meet the following age and service requirements:

- Any age ^{4,5} with at least 30⁶ years of service credit.
- At least age 60 with at least 10 years of service credit.
- MIP members may retire after five years of service if you are at least age 60; have at least five years of credited service; have at least 0.1 year of service credit in each of the five school fiscal years immediately before your retirement effective date; and terminated Michigan public school service immediately before your retirement effective date.

Early retirement

If you leave Michigan public school employment before you meet the age requirement for regular retirement, the plan allows you to retire with a reduced pension under the following conditions:

- You worked through your 55th birthday.
- You have at least 15, but fewer than 30, years of service credit.⁷

- You earned at least 0.1 year of service credit in each of the five school fiscal years immediately before your retirement effective date.
- You terminated Michigan public school service immediately before your retirement effective date.

If you retire under the early retirement provision, MPERS imposes a permanent reduction on the pension amount you would have received had you deferred your pension until age 60. The permanent reduction is one-half percent (0.005) for each month you retire before your 60th birthday.

If you are age:	The reduction is:
55 years, 0 months.....	30.0%
55 years, 1 month.....	29.5%
55 years, 2 months.....	29.0%
59 years, 11 months.....	0.5%

For example, assume you have 20 years of service credit and want to retire on your 57th birthday. Further, assume your final average compensation and years of service entitle you to a monthly pension of \$1,000 for the rest of your life, payable at age 60. If you qualify and choose to retire under the early retirement provision, your pension is permanently reduced by one-half percent for each of the 36 months (three years) until your 60th birthday. That means your pension is permanently reduced by 18 percent, or \$180 monthly. Your monthly pension will be \$820 (\$1,000 minus \$180). The reduction recognizes you are beginning to receive your payments earlier and can expect to receive your pension over a longer period of time.

If you want to retire under this early retirement provision, check with MPERS before you terminate employment to be sure you qualify.

⁴ At least 15.0 years must be MPERS service credit.

⁵ Basic Plan members must be at least age 55.

⁶ If you use Universal buy-in credit to fulfill the 30-year service requirement, your pension may begin no earlier than age 46.

⁷ At least 10.0 years must be earned MPERS service credit.

Deferred retirement

If you retire early but decide to wait until you reach age 60 to begin receiving your pension, you will be a deferred retiree and will receive the unreduced amount.

You may defer your pension if:

- you leave Michigan public school employment,
- you leave your contributions on deposit with MPERS,
- you have at least 10 years of service credit, and
- you have not yet met the age requirement to immediately begin receiving an unreduced pension.

You can defer your pension until you reach the minimum age requirement. If you defer your pension and you have between 10 and 29.9 years of service credit, you are eligible to begin receiving your pension at age 60. There is no advantage to deferring your pension past age 60. Delaying your application until age 62, 65 or older will not increase your monthly pension. By delaying, you may lose the payments you could have received, back to age 60. (You *will* receive up to 12 months of retroactive payments if you file after your retirement effective date.)

Deferred or early retirement?

If you are at least age 55 when you leave public school employment, you could choose to receive a reduced pension immediately OR you could defer your full pension until age 60. You should compare both pension amounts to see which is best for you.

If you're considering leaving employment under these circumstances, calculate estimates under both situations. Or contact MPERS and ask for these estimates. Also, see *Insurance Subsidies*, page 44, for pertinent information.

When pension payments begin

Your retirement effective date is the first day of the calendar month following the date:

- you have satisfied the eligibility requirements;
- you have terminated employment with the Michigan public school system; and
- your retirement application forms have been on file with MPERS for at least 15 days

If you complete your application forms and file them timely with MPERS, your pension should begin within 1 to 3 months of your retirement effective date and will include any retroactive payments you are due.

If you submit your retirement application *after* your retirement effective date, you can receive only a maximum of 12 months of retroactive payments.

NOTE: Wages you earn before your retirement effective date which are paid *after* that date do not affect your retirement effective date.

When to Apply for Retirement

You should apply for retirement 3 to 6 months before your last day of public school employment. To get retirement application materials, you can write, FAX, e-mail, call MPSERS Fast Facts at 1-800-353-6932 or visit any MPSERS office. To make your timely application possible, request application materials seven months before the date you plan to terminate employment. This will allow you adequate time to:

- Put the finishing touches on your financial plans (To do so, estimate your pension benefits and explore the various payment options.);
- Get a current estimate of your Social Security benefits from the Social Security Administration (SSA) by completing and returning form 7004, which is available from the SSA;
- Explore payment options for your Individual Retirement Account (IRA), Tax Sheltered Annuity (TSA), deferred compensation and other investments with the representative or institution handling your savings;
- Compile questions you need answered or clarified by MPSERS staff;
- Obtain documents you will need to complete your retirement, such as a birth certificate or other proof of age (If a survivor option is elected, proof of age is also required for your beneficiary.) (See *Appendix E*, page 62, for items you can use instead of a birth certificate.);

- Repay a refund of retirement contributions if previously taken, or purchase additional service credit (Payments due to MPSERS must be made before employment terminates.);
- Read through MPSERS' medical, dental and vision plan booklets to learn what benefits are available after you retire;
- Understand how an Eligible Domestic Relations Order (judgment of divorce), if one is on file with MPSERS, will impact your pension; and
- Submit your completed application three to six months before your employment terminates.

REMINDER: Please fill out all forms completely and accurately. If you submit incomplete or unsigned forms, your pension may be delayed.

Service Credit

You accumulate service credit for the hours you work for a participating public school. As a MPERS member, you can also purchase credit. Your total service credit, which includes credit you earn and credit you buy, is used to calculate your pension. The more years of service credit you have, the larger your pension will be. Make sure your service credit records are accurate.

Earning service credit

Your service credit reflects the number of hours you have worked for a public school that reports to MPERS. Each participating school reports your hours and compensation to MPERS. As a MPERS member, you receive credit for employment, up to a maximum of 378 hours per calendar quarter – either teaching or nonteaching; full-time or part-time; permanent, temporary, intermittent or substitute work.

You also receive credit for used vacation and sick leave and when you are receiving post-July 1, 1992 Weekly Worker's Compensation (WWC). (As of the publication date of this *Retirement Guidelines*, an appeal to the Supreme Court was pending to decide the starting date for granting WWC credit. Check with MPERS for updated information.) You do not earn service credit while you are receiving long-term or short-term disability payments. (Credit for short-term disability was under review when this *Retirement Guidelines* was published. Check with MPERS for updated information.)

You earn one year of service credit for working at least 170 days, at least six hours per day, within the July 1-June 30 school fiscal year. If you work less than 170 days or less than six hours per day, see the following chart, "Partial Years of Service Credit." You can earn no more than one year of service credit within any school fiscal year, even if you work for more than one Michigan public school at the same time.

Colleges and universities – Full-time and part-time instructors at participating colleges and universities receive credit for both contact and

noncontact hours. Members employed by colleges and universities whose normal school year is less than 170 days but more than 150 days receive full-time credit by working the number days required for the school year.

Partial years of service credit – If you work less than 1,020 hours per year, you earn partial credit for that year. You receive one-tenth year of credit for working 17 days at six or more hours per day or a total of 102 hours if you work less than six hours per day. The following chart shows examples of partial credit granted during a school fiscal year for a variety of work schedules.

Days	Hours Per Day	Service Credit Earned
17	6	.1
34	6	.2
68	6	.4
85	6	.5
119	6	.7
51	4	.2
102	4	.4
153	4	.6
204	4	.8

Member's History of Service no longer necessary

In the early 1950s, more than 5,000 schools reported to MPERS. Consolidations decreased the number of schools reporting to less than 650 in the mid-1990's. With the recent emergence of public school academies and district libraries, more than 700 entities report today.

Over the years, MPERS has received wage and service reports in many different formats. In the early 1980s, MPERS began a project to update existing service data and improve reporting procedures.

To assist with these updates, members were previously asked to complete a *Member's History of Service* form (R50C) and submit it for a service credit evaluation. Staff used information on the *Member's History of Service* form to verify the accuracy of MPSERS' data records.

MPSERS discontinued using the *Member's History of Service* since the data currently reported on the MPSERS data system has proven to be accurate. If you wish to receive a verification of your service credit, call, mail, e-mail or FAX your request to MPSERS. Be sure to include your Social Security number and mailing address in your request. Once MPSERS verifies your service, your annual *Member's Statement of Account* will reflect your service credit.

Additional service credit

If you qualify, you may buy credit to supplement your earned service credit. As a MPSERS member, you may buy credit at any time. However, purchased credit will not become part of your total service until you earn at least 10 years of MPSERS service credit, unless otherwise noted. Buy-in credit does not apply to the minimum 10-year service credit requirement for a pension or the minimum five-year service credit requirement for a MIP member to receive a pension, unless specifically noted.

When you apply to purchase credit, MPSERS staff reviews your records, determines your eligibility and sends you a *Member Billing Statement*. Although you request and receive a billing statement, you are not obligated to buy the credit.

To apply for and purchase credit, you must be employed in a participating Michigan public school. You must pay for additional credit BEFORE you leave Michigan public school employment.

If you leave public school employment before fulfilling the minimum service requirement for a pension, you can request a refund of payment for any service credit you purchased.

Credit purchased by employer: If your employer pays for some or all of your service credit purchase, MPSERS considers this payment a "member" contribution toward retirement. MPSERS deposits all member payments into the Reserve for Employee Contributions and credits it toward your individual account as an after-tax contribution. You are responsible for any tax obligation that results from this payment.

Tax deferred purchases/ refund repayments

In May 1996, the Internal Revenue Service issued a private letter ruling allowing MPSERS members to purchase service credit and repay refunds using tax-deferred dollars.

The IRS attached three conditions to the tax-deferred purchase program.

1. **The tax-deferred purchase, once initiated, is irrevocable.** Once you begin making a tax deferred purchase, you cannot stop until you complete the purchase or terminate employment with that employer.
2. **The employee must not have constructive receipt of tax deferred funds used to purchase credit.** Participants will make payments by payroll deduction.
3. **The employer must pass a resolution agreeing to withhold tax-deferred payments via payroll deduction.**

MPSERS is working to resolve the significant data processing changes necessary to implement this program. MPSERS will notify schools and active members when the program is ready to begin.

Schools should not attempt to pass resolutions of participation or begin withholding tax-deferred payments until MPSERS initiates the program.

Leaving Public School Employment

If you leave Michigan public school employment before you are eligible to begin receiving a pension immediately, your participation in this plan ends. If you are credited with at least 10 years of service and leave your contributions on deposit, you can apply for a deferred pension when you satisfy the age requirement.

You may leave your contributions on deposit even if you do not have 10 years of service credit and the contributions will continue to accrue interest. If you leave your contributions on deposit with MPSERS and resume MPSERS membership in the future, your previous service credit and contributions will count toward your retirement eligibility.

You can also take a refund of your personal contributions and interest, whether or not you have 10 years of service credit. The service you performed while making those contributions is canceled if you take a refund.

Refund of contributions

You may withdraw your **personal** contributions, plus accumulated interest if you:

- are no longer employed by any Michigan public school;
- are not on a leave of absence; and
- have not satisfied the age and service requirements to immediately receive a pension.

Your refund also includes payment and accrued interest for any additional service credit you purchase.

A refund of contributions cancels all service these contributions represent. Service performed during the noncontributory period is not forfeitable.

To apply for a refund, submit a *Refund Application* (R311C) to MPSERS. Forms are available in your school payroll/personnel office or by contacting Fast Facts at 1-800-353-6932.

If you choose to have your MPSERS pre-tax contributions refunded directly to you, you will receive 80% of the refund. MPSERS is required to withhold 20% of the refund and send it to the IRS as income tax withholding to be credited against your taxes. Your pre-tax refund will be taxed in the current year unless you roll it over. You may be able to use special tax rules that could reduce the tax you owe. However, if you receive the refund before age 59 1/2, you may also have to pay an additional 10% tax as penalty for early withdrawal.

Enhancing the Value of Your Pension

As part of your financial planning, you may wish to consider ways of increasing the amount of your monthly pension at retirement. MPSERS offers several options which include granting or purchasing additional service credit and the

repayment of previous refunds of contributions. It is to your advantage to purchase additional service credit or repay your refunds as early as possible in your career, since the cost will be lower.

Service Credit Purchases

To apply for and purchase additional credit, you must be employed in a participating public school. You must pay for additional credit **before** you leave Michigan public school employment. If you qualify, you can purchase and/or receive additional service credit for any of the following reasons:

Type of Credit	Cost	Limit
Universal buy-in	Actuarial cost	5 years, reduced by purchase of credit types eliminated from law as of 1/31/91 (See page 18)
Maternity/paternity/child rearing time	Actuarial cost	5 years
Out-of-system public educational employment	Pre-1974: contributions plus interest Post-1974: 5% of highest previous year's salary	15 years on a matching basis
Active duty military service <i>Active Duty for Training:</i> (See page 19)	Intervening: no charge Nonintervening: 5% of highest previous year's salary	6 years 5 years (Combination cannot exceed 6 years)
Nonpublic educational employment	Actuarial cost	5 years
Sabbatical leave	Pre-1981: usually no charge Post-1981: 5% of highest previous year's salary	No limit
State of Michigan Civil Service	Pre-1974: contributions plus interest Post-1987: MIP costs plus interest	No limit
Weekly Worker's Compensation	Pre-July 1, 1977: contributions plus interest Post-1987: MIP costs plus interest	No limit

To purchase universal buy-in (UBI) credit, call, FAX, e-mail or send a written request to MPSERS for a universal buy-in billing statement. Be sure to include your Social Security number and your current address in your request. To purchase most other types of service credit, you must submit a completed application. An application is also necessary if your employer buys credit on your behalf (other than for UBI credit). Service credit purchase applications are available from your school's payroll/personnel office or call Fast Facts at 1-800-353-6932.

Universal buy-in

Universal buy-in credit became available in August 1989 to provide continuity of credit, recognizing the variety of service MPSERS members have performed.

Over the years, many buy-ins had been legislatively enacted to allow a diverse membership to purchase credit for past work experience. Eventually, 28 different types were available — and still many kinds of service performed by members were not recognized. To be fair to all members with varied work experience, all but seven of the buy-ins were repealed and the universal buy-in provision enacted. The universal buy-in option now allows MPSERS members to purchase credit towards retirement without linking the purchase to work performed outside the System.

While a MPSERS member, you may buy universal buy-in service credit at any time. You cannot use the service in your pension calculation until you earn 10 years of MPSERS service credit. Universal buy-in service credit does not apply to the minimum of 10 years of service credit necessary to qualify for a pension. (See *Qualifying for a Pension*, page 11.)

Your cost will be a percentage of your highest previous school fiscal year's earnings times the number of years of universal buy-in credit you purchase. If you are a part-time employee, your earnings will be equated to full time. See the *Variable Percentage Buy-In Table* on page 24 to find the applicable percentage. To receive a billing statement to purchase universal buy-in credit,

call, FAX, e-mail or submit a written request along with your current address and your Social Security number.

You may buy up to five years of universal buy-in credit in any incremental amount. If you bought any of the following repealed buy-ins, your purchased credit for these plus universal buy-in cannot exceed five years: • juvenile training school employment • community mental health employment • elementary or secondary teacher at a U.S. Armed Forces military base • teacher or administrator of American nationals in overseas public elementary or secondary schools • public or nonpublic student employment • foreign country school service for U.S. personnel or dependents of the U.S. military or U.S. Department of State • teacher with the Job Corps • teacher in a trust/former trust territory • teacher on an Indian Reservation • teacher in a foreign country teaching non-U.S. citizens • teacher with the Merchant Marines • county mental health program employment • employment with a day care/day training program for handicappers • service with the American Red Cross • Michigan National Guard credit • U.S. Armed Forces Reserve credit • service in the VISTA program • service in the Peace Corps • alternative service to active duty military • and recreation department service jointly funded by a reporting unit and a municipality.

Maternity, paternity or child rearing time

You may purchase up to five years of service credit if, for purposes of maternity, paternity or child rearing, you:

- separated from MPSERS service or out-of-system public educational service; or
- reduced your hours of MPSERS service or out-of-system public educational service.

Send a copy of your child's birth certificate or final adoption papers with your completed *Application to Purchase Maternity/Paternity or Childrearing Credit* (R8C). Call Fast Facts at 1-800-353-6932 to request an application.

While a MPSERS member, you may buy maternity, paternity or child rearing credit at any time. You must complete 10 years of MPSERS service before MPSERS will recognize your purchase as creditable service. This credit does not apply to the minimum of 10 years of service credit necessary to qualify for a pension.

Your cost will be a percentage of your highest previous school fiscal year's earnings times the number of years of maternity, paternity or child rearing credit you purchase. If you are a part-time employee, your earnings will be equated to full time. See the *Variable Percentage Buy-In Table* on page 24 to find the applicable percentage.

Out-of-system public educational service

You may buy up to 15 years of service credit for work you performed in public schools outside MPSERS, anywhere in the United States or its territorial possessions. This includes K-12 schools, community colleges or colleges and universities.

While a member of MPSERS, you may buy out-of-system public educational service credit at any time. You must complete 10 years of MPSERS service before MPSERS will recognize your purchase as creditable service. **Your out-of-system service must be followed by a minimum of five years of MPSERS service credit.** Out-of-system public educational service credit does not apply to the minimum of 10 years of service credit necessary to qualify for a pension.

Your out-of-system public educational service cannot exceed your earned MPSERS credit. If you have 10 years of MPSERS service credit at retirement, you can purchase credit for only 10 years of out-of-system public educational service. In addition, out-of-system public educational service is not creditable if you are, or will be, receiving a pension or annuity for the same service from another retirement system.

Service performed before July 1, 1974: For out-of-system public educational service you performed before July 1, 1974, the cost is based on the actual salary you earned while performing

the service and this System's contribution schedule in effect for those years, plus compound interest based on specific rates for designated periods of time, as shown in the following interest rate table:

Before July 1, 1968	3.0% plus
July 1, 1968 - June 30, 1974	4.5% plus
July 1, 1974 - June 30, 1983	6.0% plus
July 1, 1983 and forward	8.0%

For example, if you performed service before July 1, 1968, the contributions you would have paid at that time would be assessed interest at 3.0% of that amount for the period until July 1, 1968, *plus* 4.5% of the amount for the period between July 1, 1968 and June 30, 1974, *plus* 6.0% of the amount for the period between July 1, 1974 and June 30, 1983, *plus* 8.0% of the amount from July 1, 1983 forward.

Service performed after June 30, 1974: For out-of-system public educational service you performed after June 30, 1974, the cost will be 5% of your highest previous school fiscal year's earnings times the number of years of out-of-system public educational credit you purchase. If you are a part-time employee, your earnings will be equated to full time.

To apply for this credit, you must complete and submit an *Application to Purchase Out of System Public Education and Nonpublic Education Service* (R149C). Call Fast Facts at 1-800-353-6932 to request an application.

Active duty military service

You can receive credit, under certain circumstances, for time you spend in military service. The amount of credit and the cost to you depends on whether your military service intervened your MPSERS service; when you served; State law; the federal law in effect at that time; and how long you served.

Intervening: You may receive up to six years of service credit at no cost if you leave MPSERS service, directly enter active duty in the U.S. Army, Navy, Marine Corps, Air Force or Coast Guard – including reserve components – and

return to employment with a MPSERS participating school within 24 months of discharge.

If you return to work from intervening military service December 21, 1994, or later, the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, a federal law, applies to you. USERRA expands the definition of **intervening active duty** to include active duty for training, initial active duty for training, inactive duty for training, full-time National Guard duty and absence from work for a military fitness examination if you return to work December 21, 1994, or later. You can receive credit at no cost for military duty that meets this definition. There may be a cost to you to receive credit for active duty for training *before* December 21, 1994.

If you returned to work from intervening active or inactive duty for training *before* December 21, 1994, you may be eligible for retirement credit under the Veterans Reemployment Rights Act (VRRRA) of 1974, the federal law in effect before the Uniformed Service Employment and Reemployment Rights Act of 1994. To determine if your intervening active or inactive duty for training qualifies, send MPSERS a completed *Application for Military Credit* (R81C) and a photocopy of the military papers ordering you to report to active or inactive duty for training. The papers should indicate your period of duty and the authorization codes under which you were ordered to duty. Whether you or your employing school district pays the cost depends on when you performed this service.

You may use eligible intervening military credit to satisfy the 10 years of service credit you need to qualify for a pension. However, it does not apply to the 10 years you need to be eligible to receive credit for other types of service credit purchases.

Nonintervening: If your active duty U.S. military service did not interrupt your MPSERS service, you can purchase up to five years of credit. Only nonintervening active duty in the U.S. Army, Navy, Marine Corps, Air Force and Coast Guard – including reserve components – is purchasable. You can buy the same amount of credit you would have earned during your military service

had you been working for a Michigan public school.

Your cost will be 5% of your highest previous school fiscal year's earnings times the number of years of military credit you purchase. If you are part-time employee, your earnings will be equated to full time.

As a MPSERS member, you may purchase your nonintervening active duty military service any time. You must complete 10 years of MPSERS service before the purchase will be recognized as creditable service. Nonintervening active duty military service credit does not apply to the minimum of 10 years of service credit necessary to qualify for a pension.

If you have both intervening and non-intervening active military service, MPSERS will recognize a maximum of six years of service credit for the combination. For example, if you served in the military for four years before joining MPSERS, then served three years of intervening military service, you receive the intervening service at no cost. You may purchase up to three years of your nonintervening service, for a total of six years.

You cannot receive or buy credit for military service if you receive credit for the same service under another publicly supported retirement system.

This restriction does not apply if you will be eligible to retire from the Federal government for service in the Reserve.

To apply for military service credit, you must submit a completed application and a photocopy of your military papers showing entry and separation dates. For copies of your military papers, write to:

**National Personnel Records Center
Military Personnel Records
9700 Page Blvd.
St. Louis, MO 63132**

MPSERS will evaluate your eligibility and notify you. For an application, call Fast Facts at 1-800-353-6932.

Nonpublic educational employment

You may purchase up to five years of service credit for nonpublic educational service. Credit is available for work you performed in a qualified nonpublic elementary or secondary school. To qualify, the nonpublic school must offer a course of academic study primarily oriented toward awarding high school diplomas.

As a MPSERS member, you may also purchase credit for service you performed in a nonpublic two- or four-year college or university that offers an academic course primarily oriented toward associate, baccalaureate, master's, doctoral, or other academic degrees.

As a MPSERS member, you may purchase nonpublic educational service at any time, but you must complete 10 years of MPSERS service before the purchase will be recognized as creditable service. Your **nonpublic educational service must be followed by at least five years of MPSERS service credit**. Nonpublic educational service does not apply to the minimum 10 years service credit to qualify for a pension.

Your cost will be a percentage of your highest previous school fiscal year's earnings times the number of years of nonpublic educational service credit you purchase. If you are a part-time employee, your earnings will be equated to full-time. See the *Variable Percentage Buy-In Table*, page 24, to find the applicable percentage.

To apply for this credit, you must complete and submit an *Application to Purchase Out of System and Nonpublic Education Service* (R149C). Call Fast Facts at 1-800-353-6932 to request an application.

Sabbatical leave

As a MPSERS member, if you take an authorized sabbatical leave of absence, you may receive service credit for the leave if you meet certain requirements.

Eligibility requirements

For a sabbatical leave granted before October 30,

1980, you receive credit for the leave at no cost if you satisfy the following requirements:

- You were employed by the board granting the leave for at least seven consecutive years immediately before the sabbatical.
- You held a permanent or life certificate, or you were teaching in a college maintained by the board granting the leave.
- The leave was granted for professional improvement.
- The leave did not exceed two semesters.

For a sabbatical leave granted before October 30, 1980, that does not satisfy the above requirements, or for all sabbatical leaves granted on or after October 30, 1980, you may purchase credit if:

- You accrued with the employer granting the leave at least five years of service credit, with at least one-tenth (0.1) year of credit in each of the school fiscal years immediately before the leave (0.1 year is earned by working 17 days at six or more hours a day, or if you work less than six hours a day, a total of 102 hours); and
- You had no break in service and no leave of absence while accruing the five years of service credit before the leave; and
- You returned to the employer granting the leave and accrued one year of service credit following the leave.

You must send a **photocopy of the Board minutes granting your leave** along with your completed *Application to Purchase Sabbatical Leave Credit* (R148C). Call Fast Facts at 1-800-353-6932 to request an application.

You may use sabbatical leave credit to satisfy the 10-year minimum service credit for a pension. However, it does not apply to the 10 years you need to be eligible to purchase and receive credit for other types of service credit.

If your leave of absence was for professional improvement but was not granted as an official sabbatical leave, call any MPSERS office for further information.

Sabbatical Leave Credit Cost

For a sabbatical leave granted before July 1, 1981, the cost is 5% of your compensation for the school fiscal year just before the school fiscal year your sabbatical leave was granted, plus interest. **Your employer pays the cost** if the leave was granted during the noncontributory period (after July 1, 1977). **You pay the cost** if the leave was granted during the contributory period (before July 1, 1977).

For a sabbatical leave granted July 1, 1981 and later, your cost will be 5% of your highest previous school fiscal year's earnings times the credit you purchase. If you are a part-time employee, your earnings will be equated to full time.

To receive credit for your sabbatical time, you must purchase credit for the entire leave; partial credit is not allowed.

State of Michigan service

If you are a MPSERS member who previously worked for the State of Michigan, you may receive credit for **all years** of service under the State Employees Retirement System (SERS).

There is no cost for credit for service you performed as a member of SERS from July 1, 1974, through December 31, 1986. For service performed on or after January 1, 1987, MIP members pay 1.5% of SERS wages received after that date, plus 8% interest*. For pre-July 1, 1974 service for all MPSERS members, the charge is based on the actual salary you earned while performing SERS service and this system's contribution schedule in effect for those years, plus compound interest based on specific rates for designated time periods, as shown in the following interest rate table:

Before July 1, 1968	3.0% of salary
July 1, 1968 - June 30, 1974	plus 4.5%
July 1, 1974 - June 30, 1983	plus 6.0%
July 1, 1983 forward	plus 8.0%

MPERS recognizes credited State of Michigan service as MPERS service. State of Michigan service is not recognized until the cost for all service is paid in full. You cannot receive partial credit. To apply for credit, call Fast Facts at 1-800-353-6932 to request an *Application for State of Michigan Service* (R317C).

Weekly Worker's Compensation

MPERS members are eligible to receive service credit for the time they receive Weekly Worker's Compensation (WWC). Michigan public schools began reporting WWC payments to MPERS effective July 1, 1992.

Contact your payroll office to verify your post-July 1, 1992, WWC was reported to MPERS so you can receive the corresponding service credit.

For WWC received before July 1, 1992, members can apply for credit retroactively. Submit an *Application for Credit for Weekly Worker's Compensation* (R285C). Call Fast Facts at 1-800-353-6932 to request an application. Service credit is granted when you pay the associated costs, if any, for the hours you would have worked if you hadn't been receiving WWC.

Whether there is a cost for this credit depends on when you received WWC. If you received WWC during the contributory period (before July 1, 1977), you pay the retirement contributions, plus compound interest. If you are a MIP member, MIP contributions, plus compound interest, will be due on WWC payments you received after January 1, 1987.

As of this *Retirement Guidelines* publication date, an appeal to the Supreme Court was pending to decide the starting date for reporting WWC credit. Check with MPERS for updated information.

In addition to these types of credit, under certain circumstances, credit is available for service performed under CETA and other governmental units in Michigan.

*No charge for Basic Plan members because there are no additional MIP benefits to fund.

Comprehensive Employment and Training Act (CETA) employment

Developed in 1973, CETA is a federally funded program designed to help increase employment opportunities by offering job experience in public service programs.

CETA service performed in a MPERS public school is creditable under MPERS if you became employed as a regular public school employee within 12 months of leaving CETA. Generally, service credit is already granted for CETA service performed before May 3, 1976 and after October 1, 1978. If you performed CETA service in a public school under MPERS and you are not sure whether you received credit, contact MPERS.

Other governmental unit service (Reciprocal Retirement Act 88 of 1961, as amended)

Service you performed for a governmental agency does not qualify for buy-in credit. However, under certain conditions, you may combine Michigan governmental unit service with MPERS service to qualify for a pension.

You must have retirement contributions on deposit with that unit's retirement plan that you and/or your employer made for service performed for that governmental unit. In addition you must have at least 3.5 years of MPERS service credit. You must not have more than a 15-year break-in-service between your governmental unit service and your MPERS service.

If your governmental unit service meets these requirements and that service combined with your MPERS service qualifies you for a pension you would not receive otherwise, you should notify MPERS. You can use governmental unit employment to qualify for a pension, but not to calculate your pension amount. If you apply for benefits based in part upon such employment, you must provide a letter from the governmental

employer verifying your dates of employment and stating that you have retirement contributions on deposit from a contributory plan or your service remains in force from a noncontributory plan.

If you took a refund of the contributions representing your other governmental unit service, you may wish to contact your previous employer concerning repayment. According to the Reciprocal Retirement Act, you may be eligible to make repayment. If so, your previous employer and/or MPERS can tell you how it would affect your situation.

Cost of service credit

For universal buy-in credit; maternity, paternity or child rearing time; and nonpublic educational service, your cost for each year purchased will be a percentage of your highest previous school fiscal year's earnings times the number of years of buy-in credit you purchase. If you are a part-time employee, your earnings will be equated to full-time.

The table on page 24 shows the percentage rates. These rates are based on your age as of July 1 of the school fiscal year when you purchase buy-in credit. The payment is considered to be sufficient to fund the additional benefits provided by the buy-in credit.

The amount used to figure your cost cannot exceed your final average compensation (FAC), determined when you retire. If your FAC is less, your cost will be refigured using your FAC. You will be refunded the difference.

The charge is lower at younger ages, when payment results in a longer investment period to fulfill the funding requirement. Likewise, the higher charge at an older age is a result of a shorter investment period to fulfill the requirement.

Variable Percentage Buy-In Table

Effective January 1, 1992. Applies to MIP members. Basic members see note below.

Age at Purchase	Percentage Rate	Age at Purchase	Percentage Rate
Up to 25	9.3%	43	13.0%
26	9.5%	44	13.2%
27	9.7%	45	13.4%
28	9.9%	46	13.7%
29	10.1%	47	13.9%
30	10.3%	48	14.1%
31	10.5%	49	14.3%
32	10.7%	50	14.5%
33	10.9%	51	14.7%
34	11.1%	52	14.9%
35	11.3%	53	15.1%
36	11.6%	54	15.3%
37	11.8%	55	15.5%
38	12.0%	56	15.7%
39	12.2%	57	15.9%
40	12.4%	58	16.1%
41	12.6%	59	16.3%
42	12.8%	60 and older	16.5%

Note: The percentage rate for a Basic Plan member is four percentage points lower. These rates are subject to change. A six-month period between notification to MPSERS public schools and a change in the percentage rates is required.

Rollover of tax-deferred money

If you have tax-deferred money from an eligible savings plan, MPSERS can accept a rollover of funds to purchase additional service credit or repay a refund. We can accept a rollover only up to the amount of the additional service credit purchase. Any overpayment will result in a refund to you, less the required 20% tax withholding. The following tax-deferred savings plans are eligible, according to the Internal Revenue Service (IRS):

- 401(a)
- 401(k)

Funds from a tax-sheltered annuity (TSA-403b) **cannot** be accepted as rollover. Funds from an individual retirement account (IRA) can be accepted **only when the original source of funds is a qualified 401(a) or 401(k).**

Call Fast Facts at 1-800-353-6932 for a *Qualified Rollover Certification (R158C)*, which must be completed and submitted to MPSERS along with your payment and Member Billing Statement. Contact the IRS for qualification requirements before processing a rollover of tax-deferred funds.

Repayment of Refunds

If you take a refund of your contributions when you leave Michigan public school employment, you cancel the corresponding service credit. If you return to work for a Michigan public school that participates in MPERS, you can reinstate your canceled service credit by repaying the refund.

You must meet the following requirements to repay your refund:

- If five years (60 months) or less elapsed between the time you left and the time you returned to Michigan public school work, you must earn at least one year of service credit after your return before you can repay the refunded amount, plus interest charges.
- If you left public school employment for more than five years (60 months), you must earn two years of service credit after your return before you are eligible to repay the refunded amount, plus interest charges.
- You must be employed in a Michigan public school to repay your refund.
- You must complete repayment **before** you leave Michigan public school employment.
- Your refund must be repaid in full to reinstate the credit.

Interest: When you repay a refund, you also pay interest charges from the date of the refund to the date of payment in full.

Service before July 1, 1977: If you performed the service represented by the refund before July 1, 1977, simple interest is charged on the amount withdrawn. (Simple interest is interest at one or more annual rates determined by the MPERS Board.) The interest is cumulative, based on a set rate for a specific period of time, as shown in the following interest rate table:

Before July 1, 1968	3.0% plus
July 1, 1968 - June 30, 1974	4.5% plus
July 1, 1974 - June 30, 1983	6.0% plus
July 1, 1983 and forward	8.0%

For example, if you performed the service represented by the refund before July 1, 1968, your repayment includes 3.0% of the amount withdrawn for the period until July 1, 1968, *plus* 4.5% of the amount withdrawn for the period between July 1, 1968, and June 30, 1974, *plus* 6.0% of the amount withdrawn for the period between July 1, 1974, and June 30, 1983, *plus* 8.0% of the amount withdrawn from July 1, 1983, forward.

MIP Service (after January 1, 1987): If you performed the service the refund represented under MIP (after January 1, 1987), you must repay the compound interest your account would have earned had the refund not occurred. (Interest is compounded annually on July 1 on the contributions on account as of the previous July 1 and computed at the rate of investment return specified in the law.) The following interest rates are posted through July 1, 1997:

July 1, 1988	16.3%
July 1, 1989	8.2%
July 1, 1990	10.2%
July 1, 1991	8.5%
July 1, 1992	7.4%
July 1, 1993	6.3%
July 1, 1994	7.5%
July 1, 1995	6.9%
July 1, 1996	8.14%
July 1, 1997	10.62%

Explore Early-Out Offers Thoroughly

In recent years, many employers have offered monetary incentives for employees to retire early. Frequently these programs are offered without much notice and only during a limited sign-up period. You may suddenly be faced with making a monumental decision with little time to explore all of its implications.

If your employer offers you an early retirement program, you need to investigate carefully and assure yourself that it is right for you – right financially, career-wise and for your family – and not just right for your employer.

You need to weigh carefully the pros and cons of accepting such an opportunity. Your previous financial and retirement planning probably did not take this situation into account. Retiring several years sooner than you had anticipated places a greater burden on the adequacy of your financial planning. While the offer may be tempting, it may not be in your long-term best interest.

Early retirement and its effect on Social Security

If you plan to retire from public school employment before your Social Security payments begin, you should factor that into your financial planning. Your Social Security benefits will be lower than if you work up to the age you are eligible to receive benefits. To compensate for this decrease, you may have to rely on your personal savings and investments sooner.

Your Social Security benefit is based on your average lifetime earnings over a certain period of years. It represents a percentage of your highest average annual indexed earnings over your working lifetime. If you were born in 1929 or later, the highest 35 years of indexed earnings after 1950 are generally used. Benefit amounts are lower if you earned less than the

maximum amount of taxable earnings over time and worked fewer than 35 years.

If you retire in your late 40s or 50s you will receive lower benefits than if you worked to age 62. This is because you will not be paying Social Security taxes on progressively higher amounts of earnings over a longer period of time.

You may also lose coverage for Social Security disability benefits if you stop working at a younger age. An employee who becomes disabled after age 30 usually needs work credits (called "quarters of coverage") for one half of the 10-year period ending when his or her disability begins. An employee who becomes disabled more than five years after his or her last employment may not be covered for disability benefits.

MPERS recommends you contact the Social Security Administration for complete information on your situation before you finalize your retirement plans.

Irrevocable nature of retirement

Once you retire, **your option choice, survivor pension beneficiary and retirement effective date are irrevocable and cannot be changed.** Even if you return to public school employment in Michigan, you cannot become a member of MPERS. Your earnings will be reported to MPERS as retiree earnings. If your plans include a return to work, you should refer to page 46 of this booklet to determine if post-retirement employment could affect your pension.

Pre-Retirement Pension Payouts

Disability Pensions

If you become totally and permanently disabled while a MPSERS member, you may qualify for a disability pension. MPSERS offers two types of disability pensions, depending on whether your disability results from your public school employment.

Disability issues are complicated because most people don't plan to have to deal with them. Rather than trying to handle confusing disability decisions alone, we recommend you contact MPSERS for assistance and advice as soon as a disability pension may be necessary.

Nonduty disability pension

A nonduty disability pension is appropriate when your disabling illness or injury does not result from your public school employment.

Your nonduty disability protection begins when you attain 10 years of MPSERS service credit. No minimum age requirement applies.

You are eligible to receive a nonduty disability pension if for any reason:

- you become totally and permanently unable to perform your duties as a school employee in the position for which you are trained or experienced
- you do not meet the age and service requirements for a regular pension
- you have 10 or more years of service credit
- your physician and an independent physician certify you are totally and permanently disabled for the duties required of your position, or a similar one for which you are qualified, and
- the MPSERS Board approves the disability pension.

Your disability pension is calculated exactly like a regular retirement pension.

Application time limit

For nonduty disability, you must submit a completed *Application for Disability Retirement (R83C)* for a disability pension no later than 12 months from the date you terminate employment. If extenuating circumstances prevent you from applying for a nonduty disability pension and you present satisfactory evidence of the circumstances to the MPSERS Board, the application period may be extended to a total of 36 months following termination of your employment. Call Fast Facts at 1-800-353-6932 to request an application.

Duty disability pension

You have duty disability protection from your first day of employment in a participating Michigan public school. If you are disabled by a work-related illness or injury for which you are receiving Weekly Worker's Compensation, you can apply for a duty disability pension.

You must submit a completed *Application for Disability Retirement (R83C)* for a duty disability pension no later than 12 months after you terminate public school employment. Call Fast Facts at 1-800-353-6932 to request an application.

You are eligible for a duty disability pension if:

- you become totally and permanently unable to perform any gainful employment because of an injury or illness that occurred as a result of your employment in a Michigan public school
- you are receiving Weekly Worker's Compensation, resulting from this disability
- you do not meet the age and service requirements for a regular pension
- your physician and an independent physician certify you are totally and permanently disabled
- the MPSERS Board approves your duty disability pension.

No minimum age or service requirement applies to a duty disability. A duty disability pension is calculated exactly like a regular retirement pension, using your actual years of service credit. If you have less than 10 years of service credit, MPERS will use a minimum of 10 years to calculate your pension.

Pre-retirement Survivor Pension

If you die before you retire, your spouse or another beneficiary may receive a survivor pension if you met certain qualifications. Besides your spouse, or minor child if you have no spouse, other eligible beneficiaries include a brother, sister, child over age 18 (including adopted child) or parent, as long as he or she is dependent on you for support.

If you are married, your spouse is automatically your beneficiary. If your designated primary beneficiary is not your spouse, your spouse must sign your *Beneficiary Nomination* form (R315C) declining the automatic survivor benefit.

P.A. 300 of 1980, as amended, does not permit you to name a trust, living will, estate, organization or company as a beneficiary for a monthly survivor benefit. You can nominate an *eligible* beneficiary *in care of* a trust to indicate where the proceeds of your pension would be sent or deposited.

For example, a widowed member, Todd Wilson, could designate his minor daughter as primary beneficiary, in care of a trust set up for her, by specifying: "Mary Ann Wilson c/o the Mary Ann Wilson Trust." If Todd dies before retirement and Mary Ann is no longer eligible for a survivor pension, she would receive a refund of any member contributions.

Nonduty survivor pension

Your spouse or other eligible beneficiary may receive a monthly survivor pension if you die while still working and you met the following plan requirements:

- 10 or more years of service credit if under age 60;⁹ or
- five or more years of service credit if at least age 60.⁹

Your spouse is automatically your beneficiary to receive a survivor pension. If you do not have a surviving spouse, your children under age 18 are automatically your beneficiaries to receive the pension until they reach age 18.

If you are not married or if your spouse signs your *Beneficiary Nomination* form (R315C) declining the automatic spousal benefit, you may designate another primary beneficiary to receive a monthly survivor pension. ***Other eligible beneficiaries MUST depend on you for at least 50% of their personal support and could be a child over age 18 (including an adopted child), brother, sister or parent.*** You must designate that person as your primary beneficiary on your *Beneficiary Nomination* form, which must be on file with MPERS at the time of your death.

If you die while still employed, the monthly survivor pension is effective the month following your death. The amount is calculated as if you had retired the day before you died and selected Option 2, 100% Survivor Pension (refer to page 50). Health, dental and vision insurance coverage is also available to beneficiaries who are receiving a survivor pension.

If you die while your retirement is in deferred status (i.e., you left public school employment before meeting the age requirement for a pension), your eligible beneficiary may receive a monthly survivor pension if you:

- have 10 or more years of service credit¹⁰
- filed a *Beneficiary Nomination* form (R315C) with MPERS before you left employment.

⁹ Basic Plan members must have at least 15 years of credited service if they are under age 60 or 10 years of credited service if they are at least age 60 for their survivors to be eligible for a survivor pension.

¹⁰ Basic Plan members must have 15 years of credited service.

The deferred monthly survivor pension becomes payable beginning the month you would have otherwise become eligible to receive a pension; it is paid as if you had chosen Option 2.

Duty survivor pension

From your first day of Michigan public school employment, your eligible beneficiary is protected in case you die from a work-related illness or injury.

If you die from an injury or illness resulting from, or in the course of, your public school employment, your eligible beneficiary is entitled to a survivor pension, regardless of your age or service credit. To qualify, you or your beneficiary must receive a Weekly Worker's Compensation benefit as a result of your injury or illness.

The duty death pension is figured as if you had chosen Option 2, using a minimum of 10 years of service credit, even though you may not have accrued that much credit. If you have more than 10 years of service credit, the benefit calculation uses your actual service credit.

Your beneficiary

Your primary beneficiary is the person you designate to receive survivor benefits when you die.

If you die from a work-related illness or injury with no beneficiary designation on file with MPSERS, your spouse receives a duty death pension. If you are not married, the pension is payable to your children under age 18. If you have no children, a totally and permanently disabled parent dependent on you for 50% of his or her support is eligible for a duty death pension.

You can see why it is important to name a beneficiary for the plan's survivor benefits and to keep that beneficiary designation up to date.

You name a beneficiary when you complete your *Beneficiary Nomination* form. That person's name appears on the annual *Member's Statement of Account* you receive each year. You can change your beneficiary designation during your working years by filing a new *Beneficiary Nomination*

form. You can get the form by calling Fast Facts at 1-800-353-6932 or from your school's personnel/payroll office. Once you file this form, you need not do so again unless you are changing your beneficiary.

Refund of contributions

If you die before retirement and your beneficiary is not entitled to a monthly survivor pension, any personal contributions you made, including any additional service credit you purchased, plus accrued interest, will be refunded to your beneficiary in a lump sum.

If you do not name a beneficiary, your contributions may be distributed by order of the probate court.

Filing for survivor's benefits

When a member dies, the beneficiary or other representative should notify MPSERS of the member's death as soon as possible by submitting a copy of the death certificate.

MPSERS will review the member's file to determine what benefits, if any, are payable, and to whom. This determination will be sent to the individual who submitted the death certificate. If benefits are payable, the beneficiary will be sent a copy of the determination, along with appropriate forms for him or her to complete and return with the following documents, if required:

- birth certificate for self and deceased member
- marriage license (only needed if the beneficiary is the spouse)

If a survivor pension benefit is payable, the pension effective date will be the first of the month following the member's death.

Is It Time For You To Retire?

Check Your Retirement Readiness

Answering these questions may provide some insight into how well you are prepared to retire.

YES or NO?

☐ YES ☐ NO: Do you own your home free and clear? If not, will you have enough income to pay for it?

☐ YES ☐ NO: Have you planned for the future of children or others financially dependent on you?

☐ YES ☐ NO: Have you estimated how much retirement income you will receive from all sources? Is your estimate approximately 60-80% of your pre-retirement income?

☐ YES ☐ NO: Have you included a realistic inflation factor in estimating the income you will need throughout retirement?

☐ YES ☐ NO: Have you saved for or planned for major expenses such as home repairs or an automobile purchase you expect to make during retirement?

☐ YES ☐ NO: Do you plan to maintain cash in reserve for a family emergency?

☐ YES ☐ NO: Do you have a current estimate from the Social Security Administration of what your benefits will be?

☐ YES ☐ NO: Have you considered that at a time of increasing life expectancies, greater demand is placed on your personal savings and investments since they must last for a longer period of time?

☐ YES ☐ NO: If an early retirement incentive has prompted your decision to retire, are you aware these programs are typically designed for the employer's benefit?

☐ YES ☐ NO: Have you reviewed your life insurance needs and made sure your beneficiary designation is current?

☐ YES ☐ NO: Have you considered the potential benefit to yourself and your loved ones of making a living will?

☐ YES ☐ NO: Have you and your family clearly communicated your retirement expectations to each other and formulated a mutually acceptable plan?

☐ YES ☐ NO: Do you already have a fulfilling leisure time activity or hobby you plan to devote more time to in retirement?

The more "yes" answers you have, the more adequate your retirement preparation and the more likely you'll be able to preserve your standard of living.

If you have more "No" than "Yes" answers, should you delay your retirement date and continue to work? Only you can answer this. This booklet points out several important considerations for successful financial planning and retirement.

Review All Facets of Your Retirement Planning

As you evaluate your readiness to retire, you have much to consider. The following list should help you review your situation.

Debt: To the greatest extent possible, you should enter retirement debt-free. Monthly payments can place a strain on your retirement income.

Your planning needs to include setting aside money for unanticipated expenses – such as replacement of a furnace – and anticipated items, such as replacing your automobile.

Social Security: If you will also receive Social Security benefits during your post-retirement employment, you should contact the Social Security Administration to learn about its separate earnings limitations.

Pension Payment Schedule: You are probably accustomed to receiving a paycheck every two weeks. Your MPSERS pension is paid at the end of each month, for that month. Your Social Security benefit, paid on the 3rd day of each month, is for the previous month.

Life Insurance: MPSERS does not provide life insurance as a benefit. You may be covered by an employer-sponsored group life insurance, which may terminate when you retire. While reviewing your life insurance needs, you should also review your beneficiary designation to make sure it is up-to-date.

You may be approached by companies marketing “pension maximization” plans that use life insurance to replace a pension survivor option. When evaluating these proposals, remember to consider ALL the benefits your MPSERS survivor option offers, including medical insurance for your beneficiary.

Estate planning: Your assets, in combination with your MPSERS pension and your eligibility for Social Security, may be of sizable worth. Most people don’t want to think about death. Yet, if you don’t make plans and decisions, somebody else will have to make decisions for you. That “someone” else may be a spouse or friend, or the court. The decision may not always be as you would have chosen. To ensure that your plans and decisions are carried out, you need estate planning.

Estate planning starts with an inventory of your assets and ends with a will. A will is typically a written document directing the disposition of your property after death. A durable medical power of attorney directs your next of kin and medical providers regarding your care in the event you become physically or mentally incapacitated. Now is the time to make these critical decisions concerning your estate and medical care at the end of your life.

Leisure time: For many new retirees, the needs of a growing family, job pressures and financial pressures have faded into the background. How are you going to use this new-found leisure time? Before you retire, develop a plan. You soon will have the extra time to do things which you never did before. Plan to do what is important and fulfilling to you.

Health: If you have dependent children living at home or attending college, or others who are dependent on you – such as an elderly parent – you have special considerations to include in your financial planning. You may have to make special provisions for their health, dental and vision insurance needs.

Tax Obligations

State and local income tax

Pensions paid by MPSERS are exempt from Michigan state and city income tax. **Although you are exempt from paying Michigan income tax, you must file state and city (if applicable) tax returns acknowledging your MPSERS pension and claiming your exemptions.** Direct your questions about Michigan income tax liability to the Michigan Department of Treasury at 1-800-487-7000.

If you don't live in Michigan, check the state and local income tax provisions for your area.

Federal income tax

Your MPSERS pension is subject to federal income tax. **If you do not want tax withheld or want a specific amount withheld, you must complete a *Federal Income Tax Withholding Authorization* form and return it to MPSERS.** If you don't file a tax withholding authorization form, MPSERS is required by federal law to withhold tax from your pension based on the amount for a married person with three exemptions.

Each January, MPSERS sends retirees a Form 1099-R. This form details the gross pension amount paid during the preceding year, the portion subject to federal tax and the tax withheld. The 1099-R information is also sent to the Internal Revenue Service (IRS).

You have post-tax money on deposit with MPSERS if you:

- made contributions on pre-1977 employment, or
- purchased additional service credit using post-tax dollars.

You have paid taxes on this money and won't be taxed on it again. Federal law requires the tax credit for this money be distributed over your expected lifetime. Therefore, each monthly pension payment contains both taxable and nontaxable income.

The Federal Government projects your expected lifetime. If you die earlier than the government projects, your estate will have after-tax credit not yet claimed. That amount can be deducted on your final income tax return.

The total amount of your after-tax money will be reported to you before your first pension payment is issued. Keep this information. It may be important when your estate is administered.

You may want to contact the IRS if you have questions about your federal tax liability as a retiree. Check your phone book, under U.S. Government, for the IRS office nearest you.

Receiving Your Pension Payment

When MPSERS sends pension payments

Pension payments are made near the end of each month, for that month.

You should receive your first pension payment one to three months after you terminate your Michigan public school employment and all your required retirement forms are on file with MPSERS. Your first pension payment is retroactive to your retirement effective date (up to a maximum of 12 months).

When you retire, you will select the method by which you will receive your monthly pension payment. You must choose either Electronic Funds Transfer (EFT) into your bank account or a paper check mailed to your home.

EFT automatically deposits your pension each month.

MPSERS strongly recommends you choose EFT. When you use electronic funds transfer, your pension is electronically deposited directly in your account at your financial institution on the same date the paper check is dated – usually the 25th of the month. By law, MPSERS must distribute pension payments by the end of the month.

This option is safer and more convenient, eliminating the possibility that your pension payment will be lost, stolen or delayed in the mail. If your pension check is lost or stolen and cashed fraudulently by someone else, replacement could take six to 12 months.

When you select the EFT option, MPSERS mails a quarterly statement to your home providing year-to-date payroll information. It tells you the dates your pension will be deposited in the upcoming quarter.

When you elect EFT, your first two pension payments are mailed to your home before the electronic deposit begins. This provides for a test period with your financial institution to ensure that the routing, account and Social Security numbers are accurate.

Starting the Application Process

When you're ready to retire, you can get retirement application forms by calling Fast Facts at 1-800-353-6932 to request a Retirement Application Packet. **Submit your completed retirement application forms at least three to six months before your retirement effective date.**

If you submit your retirement application forms after you retire, keep in mind MPSERS cannot make retroactive pension payments more than 12 months old. You will lose retroactive benefits if you file more than 12 months after you retire.

Your retirement is irrevocable

Once you retire and begin receiving your pension payments, your option choice, survivor pension beneficiary and retirement effective date are irrevocable and cannot be changed. Even if you return to public school employment in Michigan, you cannot become a member of MPSERS. Your earnings will be reported to MPSERS as post-retirement earnings. If your plans include a return to work, you should refer to page 46 of this booklet.

Your Retirement Application Packet

Following is a list of the forms included in your Retirement Application Packet and an explanation of the function of each.

Statement of Application for Retirement (R9C) – This form acknowledges your decision to retire and the provisions under which you are retiring. It allows MPSERS to determine your pension effective date.

Election of Pension Option (R10C) – This form indicates the payment schedule by which you elect to receive your pension – either a full single life pension for your own lifetime or a reduced survivor pension based on the life expectancies of both you and your beneficiary. You can also choose one of the equated plans which provides a larger pension payment until age 62 and a permanently reduced pension afterwards, when

your Social Security would supplement your MPSERS pension.

Election of Pension Delivery Method (R297C) – Use this form to designate whether you will receive your monthly pension payment via electronic funds transfer to your bank account or a paper check mailed to your home.

Group Insurance Application (R365C) – This form tells MPSERS if you plan to enroll yourself and your eligible dependents in one or more of the group insurance plans and the date you wish coverage to be effective.

Federal Income Tax Withholding Authorization (R54C) – This form allows you to specify how you wish to have federal income tax withheld from your pension.

Insurance material

The retirement application packet includes insurance information, rate schedules and separate information booklets for the health, dental and vision plans. These provide information about dependent eligibility, enrollment, benefit provisions, coverage effective dates, monthly costs and important plan features.

You may also call the insurance providers directly at the toll-free numbers provided in the respective brochures.

Materials you provide

You will need to furnish a photocopy of your birth certificate or other acceptable proof of birthdate. If you elect a survivor option (Option 2, 2-E, 3 or 3-E), you must also furnish a photocopy of your beneficiary's birth certificate or acceptable proof of birthdate.

See Appendix E, page 62, for a list of items you can use to substitute for the birth certificate.

Submitting Your Retirement Application

After you read and complete the required forms and use the *Retiring Applicant's Checklist*, (R118C) to determine all forms are complete, mail the forms to:

Michigan Public School Employees Retirement System
P.O. Box 30673
Lansing, MI 48909

MPERS will confirm the receipt of your forms. MPERS cannot process an incomplete application. In that situation, staff will notify you and tell you what is missing or incomplete.

If necessary documents are delayed, your pension payment will be delayed.

Keep your home address up to date with MPERS. MPERS needs your current address for mailing the quarterly EFT statement and for special mailings, such as insurance rate notices, income tax information and other important notices you will receive. To change your address, send MPERS a signed letter with your old address, your new address and the date you want the change to be effective. Also be sure to include your Social Security number in the letter.

Notification your application is complete

MPERS letter – When you are scheduled to receive your initial pension payment, MPERS will mail you a letter advising when you will receive your first check. MPERS also notifies you of the information used to compute your pension.

Included with the MPERS letter is a Pension Recipient Information Booklet, Post-Retirement Employment Flyer and a MPERS Retiree ID Card.

Effective Date of Retirement and Your First Pension Check

– Your retirement is effective the first of the month following the month in which:

- You have satisfied the eligibility requirements;
- you have terminated employment with the Michigan public school system; and
- your retirement application forms have been on file with MPERS for at least 15 days

Calculating Your Monthly Pension

The pension calculation formula is the same for all MPSERS members, regardless of your job title and responsibilities. Differences in pension amounts are the result of differences in two variables: service and salary. The longer your career and the larger your average salary, the larger your pension.

MPSERS' pension formula

Your pension is calculated according to the following formula:

Your final average compensation

X

1.5% (.015)

X

Your years of service credit =

Your annual pension

Your pension is payable during your lifetime.

Reportable Compensation

The retirement statute recognizes the following types of compensation, and instructs the participating schools to report them. The compensation used to calculate your final average compensation includes:

- wages you earned while performing the duties of your position, including compensation for extra bona fide work assignments, such as coaching or driver education.
- wages you earned and invested in a tax-sheltered annuity or placed in a deferred compensation plan
- longevity pay
- overtime pay
- vacation pay while absent from work
- holiday pay while absent from work
- sick leave pay while absent from work, including Weekly Worker's Compensation (WWC) for an injury you sustained while

employed with a Michigan public school (The courts are still deciding the effective date for including WWC compensation - check with MPSERS for current information.)

- merit pay for achieving specific performance objectives.

In addition, certain items of value that are part of your salary (meals, lodging or personal use of an automobile) **may** be considered compensation. These are known as "in-kind" compensation and their value (as determined by the MPSERS Board) **may** be used in determining your final average compensation for a **limited period of time**.

The MPSERS Board voted in early 1997 that, beginning January 1, 2000, in-kind compensation will not be reportable for purposes of calculating your retirement pension.

The following types of payments are **excluded** from your final average compensation:

- payments for unused sick or vacation time
- bonus payments
- retirement incentive payments
- hospitalization insurance and life insurance premiums
- fringe benefits
- payments received directly or indirectly for actual or anticipated expenses
- payments in lieu of health insurance or other fringe benefits
- payments for the specific purpose of increasing final average compensation.

Your wages for the period in which final average compensation is determined cannot exceed your previous year's wages, except under the normal salary or wage schedule at your school.

Calculating your final average compensation

MPSERS will contact your school's personnel/payroll department about four weeks before you terminate employment to request wage and service information necessary to determine your pension eligibility and amount. If you apply after you terminate employment, MPSERS will contact your school's personnel/payroll department after a preliminary review of your application.

Your payroll officer completes an affidavit to ensure all your wages have been reported and to verify excess payments you received, if any, in addition to your base contract (i.e. retroactive contract settlements, longevity, COLA, overtime, additional class loads, etc.). The payroll officer then returns the completed affidavit to MPSERS.

MPSERS cannot make a final determination regarding your eligibility and amount until we receive this information from your employer.

Your highest consecutive months of earnings determine your final average compensation. It doesn't matter if you retire during the school year, rather than at the end of the school year, or if you are a 10-month employee who receives part of your wages during the summer months after you retire.

Final average compensation for MIP members is calculated using their highest consecutive three years' (36 months) salary¹¹. For example, if you earned \$28,600, \$30,100 and \$31,700 in the last three years of employment, your final average compensation is \$30,133.

$$\$28,600 + \$30,100 + \$31,700 = \$90,400$$

$$\$90,400 / 3 = \$30,133$$

Using that final average compensation in the pension formula, assuming 30 years of service, you will receive an annual pension of \$13,560.

$$\$30,133 \times 1.5\% = \$452$$

$$\$452 \times 30 = \$13,560$$

Divided by 12, this yields a monthly pension of \$1,130.

Post-retirement increases

As a MIP retiree, you will receive a fixed 3% annual increase, based on your initial pension¹². You receive your first increase in the second October after your retirement. If you retired July 1, 1997, you will receive the initial 3% increase in October 1998.

The 3% increase does not compound, but it does accumulate. In the second year after retirement, your initial pension increases by 3% of your initial pension. The following year, your initial pension has increased by 6%, then by 9%, and so on.

In the previous example, the retiree receives the same increase of \$406.80 (3% of \$13,560) every year. The annual pension in the second year is \$13,966.80; in the third year, \$14,373.60, and so on.

Appendix A, page 48, contains worksheets and instructions you can use to estimate your future pension. Remember, this is only an estimate. When you retire, MPSERS thoroughly reviews and audits your account to calculate your pension amount.

¹¹ Basic Plan members calculate their final average compensation using the highest consecutive five years (60 months).

¹² Not available to Basic Plan members. Basic Plan members receive a supplemental payment in those years when investment earnings exceed actuarial assumptions.

Pension Payment Options

The pension formula determines the amount of pension you are eligible to receive during your lifetime. If you want pension payments to continue to your spouse or another eligible beneficiary (a brother, sister, child, adopted child or parent) when you die, you can elect a survivor pension payment option. Choosing a survivor pension option reduces your monthly pension payment.

With your retirement application forms, you receive an *Election of Pension Option* form (R10C). This form requires you to elect a single life or survivor option for your pension. Your choice will determine whether or not payments continue to a beneficiary after you die.

If you are married, your spouse is automatically your Option 2 (or 2E) or 3 (or 3E) beneficiary. If you select Option 1 or designate someone other than your spouse as your beneficiary, your spouse must relinquish his or her automatic survivor benefit by signing off on the *Election of Pension Option* form (R10C).

You cannot change your retirement option or survivor pension beneficiary after MPERS processes your first pension payment.

Your payment options are as follows:

Option 1 - Single Life Pension

With this option you receive monthly payments during your lifetime only.

Option 1 pays the highest monthly pension you can receive during your lifetime. Payments and insurance coverage of dependent(s) stop when you die. Benefits do not continue to your beneficiary.

Option 1-E combines Option 1 and the Equated Retirement Plan (see page 40). Payments and insurance coverage of dependent(s) stop when you die. Benefits do not continue to your beneficiary.

Under Option 1 or 1-E, if you die before the total pension amount you have received equals or exceeds your personal accumulated contributions and interest on deposit when you retired, your beneficiary receives the balance in a lump sum payment.

Option 2 & 3 - Survivor Pensions

(100% or 50%)

Two basic survivor pensions are available - 100% or 50%. The survivor pensions allow you to elect reduced monthly payments with insurance benefits and lifetime payments continuing to your beneficiary after your death. If you are married, your spouse is automatically your survivor pension beneficiary. If you are married and want to name someone other than your spouse as your beneficiary, you must have your spouse's written consent.

Under this option, your monthly pension is reduced based on the life expectancies of both you and your beneficiary. Your beneficiary can be your spouse, brother, sister, parent or child, including an adopted child. Dependency is not required.

Option 2 (100% Survivor Pension) pays you a reduced pension, then pays the same amount to your beneficiary during his or her lifetime. Insurance benefits continue for the beneficiary and eligible dependent(s).

Option 2-E combines Option 2 and the Equated Retirement Plan (*see page 40*).

Option 3 (50% Survivor Pension) pays you a reduced pension, then pays your beneficiary a monthly pension equal to one-half of your pension during his or her lifetime. Insurance benefits continue for the beneficiary and eligible dependents.

Option 3-E combines Option 3 and the Equated Retirement Plan (*see page 40*).

If your beneficiary dies before you, your pension is increased to a Single Life Pension under Option 1 or Option 1-E the following month.

Maximum pension amount limitation

In rare instances, the pensions of highly compensated employees may exceed the maximum amounts established by State and federal law.

In most cases, the maximum pension you can receive relates to your age at retirement.

MPSERS cannot pay more than the law allows.

For example, the 1997 maximum allowable annual pension amount is \$41,356 at age 45; \$56,043 at age 50; \$77,109 at age 55; \$108,326 at age 60; and \$125,000 at age 65.

Contact MPSERS if you believe your pension may exceed the limits.

The Equated Retirement Plan

If you are under age 61 and not a disability retiree, you can combine the Equated Plan with your Option 1, 2 or 3 election.

The Equated Plan gives you a method to "borrow" against your future pension benefits. It pays you a larger pension each month from your retirement date until you reach age 62. At age 62, when you become eligible to collect Social Security benefits, the additional payments stop and your monthly pension payment is permanently reduced. The permanent reduction is calculated to repay the amount you "borrowed" in the early years of your retirement.

MPERS uses an estimated age 62 Social Security benefit to establish both the additional amount it pays until age 62 and the amount by which it reduces your pension payment after you reach age 62. As an alternative, you may obtain your actual projected Social Security benefit from the Social Security Administration and submit it to MPERS for use in the Equated Plan calculation.

The Equated Plan provides you with a relatively level total monthly income, assuming you begin receiving Social Security at age 62. The total monthly income (pension payment plus the additional amount) comes from MPERS until you reach age 62, and then from MPERS and the Social Security Administration after age 62.

These examples show how the Equated Plan works. Let's assume the following conditions:

	A	B
<i>Your age at retirement</i>	54	60
<i>Years of service</i>	30	20
<i>Average salary</i>	\$30,000	\$20,000
<i>Monthly pension</i>	\$1,125	\$500
<i>Estimated Social Security at age 62</i>	\$990	\$435

By choosing the Equated Plan, you would be paid the monthly pension, plus an additional

amount, which is an actuarially determined percent of the estimated Social Security benefit.

	A	B
<i>Monthly Pension</i>		
<i>Without Equated Plan</i>	\$1,125	\$500
<i>Additional amount (actuarially determined)</i>	<u>+428</u>	<u>+349</u>
<i>Total monthly pension With Equated Plan until age 62</i>	\$1,553	\$849

When you reach age 62, MPERS permanently reduces your pension by your **estimated Social Security benefit determined at retirement.**

	A	B
<i>Pre-62 monthly pension</i>	\$1,553	\$849
<i>Reduction at age 62 - Est. S.S. benefit</i>	<u>- 990</u>	<u>- 435</u>
<i>MPERS Monthly pension - age 62 & after</i>	\$563	\$414

Your total income from both sources (MPERS & Social Security) after age 62 is as follows:

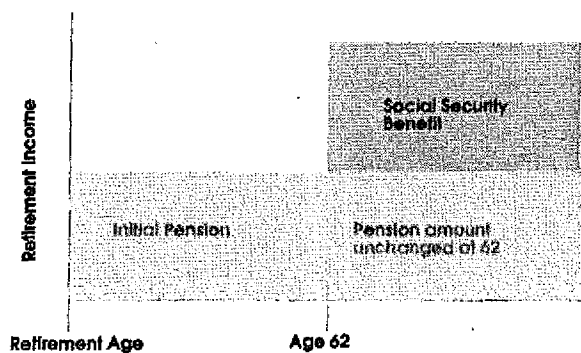
	A	B
<i>Monthly pension - age 62 & after</i>	\$ 563	\$414
<i>Est. Social Security benefit after age 62</i>	<u>+ 990</u>	<u>+435</u>
<i>Total monthly income* (MPERS + est. Social Security Amount)</i>	\$1,553	\$849

*As a MIP retiree, you will receive an annual increase based on your initial pension amount. This is not reflected in the figures above.

MPERS recovers the additional amount advanced to you based on projections of average life span. If you live as long as projected, neither you nor MPERS make or lose money with this plan. If you live a shorter lifetime than was projected, you "make" money, because you don't repay all that MPERS advanced to you. If you live longer than projected, you "lose" money on the plan because you pay more back than the amount you were advanced.

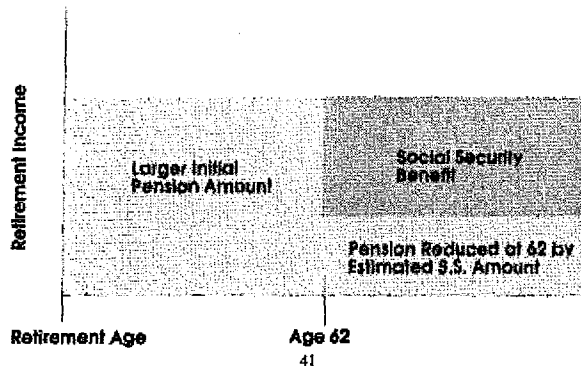
Payment Option Without Equated Plan

Income Increases at 62 by Social Security Amount



Payment Option With Equated Plan

Income Stable Throughout Retirement



Why *would* you choose the Equated Plan?

- You want to take an active role in planning your finances. You prefer to exert personal control over your money.
- You believe you can invest the money to earn more than it will cost to repay MPERS.
- You want to receive as much in pension benefits as early as possible because your life expectancy is uncertain.

Why *wouldn't* you choose the Equated Plan?

- You don't want to see your pension reduced when you reach age 62.
- You want to use the Social Security pension as a gross income increase at age 62, as a hedge against inflation.
- You think your life expectancy is longer than projected for the payback of the advance, and that a permanent reduction will end up costing you money.
- The additional amount you receive before age 62 could place you in a higher income tax bracket.

Please consider your options carefully. You cannot make a change once pension payments begin.

Insurance Information

Insurance coverage

When you retire, you may enroll yourself and your eligible dependents in the MPERS' medical, dental and vision plans. All pension recipients are eligible to enroll in medical, dental/vision and hearing aid coverage upon retirement or at a later date. Benefit levels, premium cost and subsidy, if any, are determined by the MPERS Board and the State of Michigan.

The following people are eligible to enroll in the insurance plans as dependents:

- Your spouse
- Your **unmarried** children through December 31 of the year they reach age 19. **Children must be members of your immediate family by birth or adoption.** Grandchildren and stepchildren are not eligible dependents, even if you are their legal guardian.
- Your child from age 19 through December 31 of the year he or she reaches age 25 if a full-time student (as defined by the educational institution) and a dependent according to Section 152 of the Internal Revenue Code. Proof of full-time student status is a completed *19-25 Eligibility Certification* form. Each October this form is provided to confirm your dependent's continued full-time student status.
- Your child age 19 or older who is physically or mentally handicapped and dependent according to Section 152 of the Internal Revenue Code. Proof of dependency must be submitted at the time of application, including (1) a letter from the attending physician stating the child is handicapped and incapable of self-sustaining employment, and (2) a copy of the page of the IRS form 1040 which identifies the name of the dependent. These documents must be submitted on a yearly basis in October with the *19-25 Eligibility Certification* form to confirm continued dependent status.

- your parent(s) and/or parent(s)-in-law living in your household.

Note: You are responsible for immediately notifying MPERS of any change in your status or that of your dependents. If MPERS pays claims for an ineligible person, we will adjust your retirement pension accordingly.

Enrollment. You must decide within 31 days after your pension effective date whether you will enroll in the insurance plans. If you choose not to enroll then, you may enroll later. If you enroll later, your coverage will begin six months following the first day of the month in which MPERS receives your completed insurance application.

MPERS can waive the six-month waiting period if you enroll in the plan because you or your dependent lose eligibility for coverage in another group plan. Coverage can begin within 31 days after MPERS receives your completed application. For MPERS to waive the six-month waiting period, you must send with your application a letter from the employer explaining who was covered, why eligibility in the other plan is ending and the date that coverage ends.

MPERS may also waive the six-month waiting period if you have been married within the last 30 days, provided you send a copy of your marriage license and a letter of notification.

Effective Date of Coverage. Your coverage begins on the first day of the month after MPERS receives your completed application. Coverage always begins on the first day of a calendar month. You can begin your coverage on your retirement effective date or up to 90 days later.

You should check with your school employer to determine when your present insurance(s) will terminate to be certain of continued coverage and prevent duplication of coverage. **Determining the correct effective date is very important and is your responsibility. Retroactive premium adjustments cannot be made.**

Insurance subsidy

For eligible retirees and beneficiaries, MPSERS pays a portion of the premium for your coverage. The balance is deducted from your monthly pension.

When coverage begins

You should receive your insurance identification (ID) cards and enrollment materials about two weeks after you receive your first pension check.

If you incur expenses for covered medical, dental or vision services before you receive your insurance ID cards, get itemized statements from the provider. Submit these to the insurance carrier after your card arrives. If you require hospitalization, the hospital can verify your coverage by telephoning MPSERS at (517) 322-6000 during normal business hours.

Insurance for deferred members

A deferred member is an individual who:

- Terminated public school employment with at least 10 years of credited service
- Left personal retirement contributions on deposit, and
- Did not meet the minimum age requirement for a regular retirement benefit at the time of termination. With timely application, the deferred member can begin receiving retirement benefits upon fulfillment of the age requirement.

Although all pension recipients are eligible for health, dental/vision and hearing aid benefits, the amount of premium subsidy for deferred members depends on the date employment ended.

Deferred members who terminated public school employment before October 31, 1980, and who are eligible to receive a deferred pension, are eligible for the full subsidy.

Deferred members who terminated public school employment on or after October 31, 1980, with 21 years of credited service and who are eligible to receive a deferred pension will be entitled to 10% of the health insurance subsidy. The subsidy is increased by 10% for each full year of credited service obtained beyond 21 years, up to a maximum of 100%. Members eligible for deferred benefits with less than 21 years of credited service may enroll for health, dental/vision and hearing aid benefits, but must pay the full premium.

Note: If your pension is effective the first of the month after you terminate employment, you are not a deferred member and will be entitled to the full subsidy. Deferred members who return to work before retirement and reestablish active MPSERS membership status may be eligible for full insurance subsidy.

Survivor coverage

Your beneficiary may continue medical, dental and vision coverage after your death only if you choose a survivor option (2, 2-E, 3 or 3-E) that provides a survivor pension. For more detailed information on these options, please refer to *Pension Payment Options*, page 38.

If you elect either Option 1 or 1-E, which do not provide a monthly pension to a beneficiary, your enrolled dependents will not be able to continue subsidized group coverage after your death. However, your enrolled dependents may be eligible for continuation of unsubsidized insurance coverage for a maximum period of 36 months.

Continuation of Coverage

Pursuant to the Public Health Service Act (PHSA), state and local government group health plans must provide continuation coverage to certain individuals under the Consolidated Omnibus Reconciliation Act (COBRA).

To qualify for COBRA benefits, you must be a spouse or dependent child of a MPSERS retiree and must be receiving MPSERS insurance benefits at the time of a **qualifying event**. If you are a spouse, a qualifying event would be death, divorce, or legal separation from the MPSERS retiree. If you are a dependent child, a qualifying event would be the retiree's death or loss of dependent status under the requirements of the plan. Continuation coverage does not apply to those individuals who are covered under any other group coverage or to those eligible for Medicare, or to a beneficiary of a deceased Option 2, 2E, 3 or 3E pension recipient who continues to receive a pension benefit. Please refer to *Pension Payment Options*, page 38.

Medicare and MPERS

At age 65 or sooner, if eligible, you **must** enroll in Medicare health insurance (both hospital - Part A, and medical - Part B) through the Social Security Administration to maintain maximum benefit coverage. Your MPERS health coverage adjusts automatically to supplement Medicare coverage at age 65. From that point on, MPERS no longer covers your expenses normally covered by Medicare.

Persons under age 65 who are receiving a Social Security disability pension become eligible for Medicare after receiving 24 months of disability benefits. MPERS health care coverage will be adjusted to supplement Medicare - both hospital - Part A - and medical - Part B.

In any case, Medicare-eligible retirees and covered dependents must send MPERS a copy of their Medicare card to have the supplemental portion of their claims automatically processed. This will also assure that MPERS is aware of your Medicare coverage.

Coordination of Benefits

MPERS health, dental, and vision plans contain a Coordination of Benefits (COB) provision that applies when you or your enrolled dependents are covered under more than one group plan. The combined payments of all plans will not exceed the allowable expenses of your care or services. If both you and your spouse are MPERS retirees within the same group plan, there will be no advantage for duplicating coverage because COB will not apply.

Working After Retirement

After you retire, you may return to work and earn wages from a MPSERS affiliated school and still receive your full pension, under certain circumstances. Keep in mind though, the purpose of your pension is to help replace your income when you're no longer working, not to further enrich you as you continue your public school career.

As a retiree who returns to public school employment, you are not considered an active MPSERS member. Therefore, neither you or your employer make further contributions to MPSERS. Your post-retirement earnings are, however, still reported to the retirement system to comply with the Retirement Statute.

If you have any questions about post-retirement employment, contact MPSERS with a description of the proposed employment and expected earnings.

Employment Restrictions

You may not work within the first month of your retirement effective date (even as a volunteer) in a school:

- affiliated with MPSERS; or
- for the State of Michigan (if State Employees Retirement System service is used to calculate your pension)

Earnings Limitations

If you return to work for a MPSERS affiliated school you may earn the **greater** of the following amounts without affecting your pension:

- One-third of your final salary average. For this purpose, the salary average is increased by 5% compounded for each calendar year you are retired; OR

- The maximum earnings permitted by the Federal Social Security Act as amended. Contact MPSERS or your local Social Security office for the current limits.

Allowable earnings are prorated for the first calendar year of retirement.

For every dollar you earn in excess of the statutory limit, you must return one pension dollar to MPSERS. MPSERS periodically reviews post-retirement wages from all Michigan reporting units to ensure compliance with the earning limitations established by the Michigan Public School Employees Retirement Act, P.A. 300, of 1980, as amended.

There are no limitations or restrictions on post-retirement earnings from:

- the universities within Michigan that are **not** reporting units of MPSERS; i.e., Michigan State, Michigan, Wayne State, Grand Valley State, Oakland and Saginaw Valley State
- public school academies that are not reporting units of MPSERS
- **any other work within Michigan**
- **any work outside Michigan**
- the State of Michigan (except within the month of your effective date of retirement, if State Employees Retirement System service is used to calculate your pension).

Re-calculating your pension

If you return to public school employment and earn a minimum of three years of service credit (five years if you're a Basic Plan retiree), your pension can be re-calculated to recognize your additional service.

To qualify for a pension re-calculation, you must first repay any MPSERS pension you received during the post-retirement return-to-work period used in your pension re-calculation. You must also pay an amount equal to the retirement contributions your employer would have paid if you were an active MPSERS member. Your cost for retirement contributions is your re-calculated final average compensation, multiplied by a percentage determined by the retirement law, then multiplied by the credit earned during your pension re-calculation period. The re-calculated pension will be based on your new final average compensation and include your additional service credit.

Duty and nonduty disability pension recipients

If you are a disability retiree, you must have MPSERS' written approval before you accept employment. Write to the Retiree Services Section describing any proposed employment, the hours you expect to work per week and your expected earnings.

A disability retiree who becomes employed with prior approval from MPSERS may earn the **difference** between his or her final average compensation and pension amount without penalty.

To determine your disability earnings limitation, increase your final salary average by 2% (compounded) for each calendar year you have been retired.

For every \$1 your earnings exceed the maximum, your pension will be reduced by \$1.

Your disability earnings limitation **ends** January 1 of the year you would have been eligible for a regular retirement pension, had you continued employment. When the disability earnings limitation ends, regular pension recipient earnings limitations apply.

Survivor pension recipients

Your beneficiary receiving a survivor pension is **not** subject to employment restrictions or earnings limitations unless he or she is also receiving a MPSERS pension granted on the basis of his or her own employment.

APPENDIX A

Pension Calculation Worksheets

Until you retire and all reports from your employer are filed with MPSERS, your pension can only be estimated. The following forms are designed to allow you to easily estimate your single life pension and the available survivor options.

You calculate your pension using your final average compensation (FAC) and your total years (and fraction of a year, if applicable) of service credit. This is the formula:

Your FAC X 1.5% X your total service credit = Your Annual Single Life Pension

Your single life pension is payable for your lifetime only.

When you retire, MPSERS will examine your earnings history. The highest possible FAC will be used whether you retire at the end of a school

fiscal year or any time during the year. Your FAC will be determined using your highest gross reportable wages within a 36 consecutive month period¹³. To estimate your FAC now, use your contractual earnings, *Member's Statement of Account* reported earnings, or W-2 form amounts.

If MPSERS has not already evaluated your service, you can estimate your service credit for calculating your pension.

--- Notes ---

¹³ 60 consecutive months for Basic Plan members

Option 1 pays you the largest pension you can receive and stops upon your death. **THERE IS NO CONTINUING PENSION FOR A BENEFICIARY**, only a lump-sum refund of any individual contributions not paid to you in a pension.

8. Divide your annual pension by 12. This is your estimated **Option 1** monthly pension.

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Option 2 — 100% Survivor Pension

Option 2 pays you a reduced pension using an actuarial percent. The month after your death, the same amount (100%) you were receiving continues to your beneficiary for the rest of his/her lifetime. If your beneficiary dies before you, your pension will revert to the full Option 1 pension.

1. Write your estimated Option 1 monthly pension.	\$
2. Using the ages as of your retirement effective date, write the appropriate percent from the sample Option 2 chart below and multiply. If your's or your beneficiary's age is younger or older than the range shown below, please telephone MPSEERS at (517) 322-6000 for assistance.	x
3. This is your estimated Option 2 monthly pension. Upon your death, your beneficiary will receive this amount.	\$

Example
Retiree — Age 59
Beneficiary — Age 57

1.	\$1,125.00
2.	x .82
3.	\$ 922.50

RETIREE AGE	OPTION 2 SAMPLE CHART: Percentage Rates Subject to Change														
	BENEFICIARY AGE														
	41	43	45	47	49	51	53	55	57	59	61	63	65	67	69
48	.88	.89	.89	.90	.90	.91	.91	.92	.92	.93	.93	.94	.94	.94	.95
49	.88	.89	.89	.89	.89	.90	.91	.91	.92	.92	.93	.93	.94	.94	.94
50	.87	.87	.88	.88	.89	.89	.90	.90	.91	.91	.92	.92	.93	.93	.94
51	.86	.86	.87	.87	.88	.88	.89	.90	.90	.91	.91	.92	.92	.93	.93
52	.85	.85	.86	.86	.87	.88	.88	.89	.89	.90	.91	.91	.92	.92	.93
53	.84	.84	.85	.85	.86	.87	.87	.88	.89	.89	.90	.90	.91	.92	.92
54	.83	.83	.84	.84	.85	.86	.86	.87	.88	.88	.89	.90	.90	.91	.92
55	.82	.82	.83	.83	.84	.85	.85	.86	.87	.87	.88	.89	.90	.90	.91
56	.81	.81	.82	.82	.83	.84	.84	.85	.86	.87	.87	.88	.89	.90	.90
57	.79	.80	.81	.81	.82	.83	.83	.84	.85	.86	.86	.87	.88	.89	.90
58	.78	.79	.79	.80	.81	.81	.82	.83	.84	.84	.85	.86	.87	.88	.89
59	.77	.77	.78	.79	.79	.80	.81	.82	.83	.83	.84	.85	.86	.87	.88
60	.75	.76	.77	.77	.78	.79	.79	.80	.81	.82	.83	.84	.85	.86	.87
61	.74	.75	.75	.76	.77	.77	.78	.79	.80	.81	.82	.83	.84	.85	.86
62	.73	.73	.74	.74	.75	.76	.77	.78	.78	.79	.80	.81	.83	.84	.85
63	.71	.72	.72	.73	.74	.74	.75	.76	.77	.78	.79	.80	.81	.82	.83
64	.69	.70	.71	.71	.72	.73	.74	.75	.76	.77	.78	.79	.80	.81	.82
65	.68	.68	.69	.70	.70	.71	.72	.73	.74	.75	.76	.77	.78	.80	.81
66	.66	.67	.67	.68	.69	.70	.70	.71	.72	.73	.74	.76	.77	.78	.79
67	.64	.65	.66	.66	.67	.68	.69	.70	.71	.72	.73	.74	.75	.77	.78
68	.63	.63	.64	.65	.65	.66	.67	.68	.69	.70	.71	.72	.74	.75	.76
69	.61	.61	.62	.63	.64	.64	.65	.66	.67	.68	.69	.71	.72	.73	.75
70	.59	.60	.60	.61	.62	.63	.63	.64	.65	.67	.68	.69	.70	.72	.73

Option 3 — 50% Survivor Pension

Option 3 pays you a reduced pension using an actuarial percent. The month after your death, one-half (50%) of the amount you were receiving continues to your beneficiary for the remainder of his/her lifetime. If your beneficiary dies before you, your pension will revert to the full Option 1 pension.

1. Write your estimated Option 1 monthly pension.	\$
2. Using the ages as of your retirement effective date, write the appropriate percent from the sample Option 3 chart below and multiply. If your's or your beneficiary's age is younger or older than the range shown below, please telephone MPSERS at (517) 322-6000 for assistance.	x
3. This is your estimated Option 3 monthly pension.	\$
4. Multiply your estimated pension by 50% (.50). Upon your death, your beneficiary will receive this amount.	x .50 \$

Example	
Retiree — Age 59	
Beneficiary — Age 57	
1.	\$1,125.00
2.	x .90
3.	\$1,012.50
4.	x .50 \$ 506.25

OPTION 3 SAMPLE CHART: Percentage Rates Subject to Change

RETIREE AGE	BENEFICIARY AGE														
	41	43	45	47	49	51	53	55	57	59	61	63	65	67	69
48	.91	.94	.94	.94	.95	.95	.95	.95	.96	.96	.96	.96	.97	.97	.97
49	.93	.93	.94	.94	.94	.95	.95	.95	.95	.96	.96	.96	.96	.97	.97
50	.93	.93	.93	.93	.94	.94	.94	.95	.95	.95	.96	.96	.96	.96	.97
51	.93	.93	.93	.93	.93	.94	.94	.94	.95	.95	.95	.96	.96	.96	.96
52	.92	.92	.92	.92	.93	.93	.93	.94	.94	.95	.95	.95	.95	.96	.96
53	.91	.91	.92	.92	.92	.93	.93	.93	.94	.94	.94	.95	.95	.95	.96
54	.90	.91	.91	.91	.92	.92	.92	.93	.93	.94	.94	.94	.95	.95	.95
55	.90	.90	.90	.91	.91	.91	.92	.92	.93	.93	.94	.94	.94	.95	.95
56	.89	.89	.90	.90	.90	.91	.91	.92	.92	.93	.93	.93	.94	.94	.95
57	.88	.89	.89	.89	.90	.90	.91	.91	.92	.92	.92	.93	.93	.94	.94
58	.88	.88	.88	.89	.89	.89	.90	.90	.91	.91	.92	.92	.93	.93	.94
59	.87	.87	.87	.88	.88	.89	.89	.90	.90	.91	.91	.92	.92	.93	.93
60	.86	.86	.87	.87	.87	.88	.88	.89	.89	.90	.91	.91	.92	.92	.93
61	.85	.85	.86	.86	.87	.87	.88	.88	.89	.89	.90	.90	.91	.92	.92
62	.84	.84	.85	.85	.86	.86	.87	.87	.88	.88	.89	.90	.90	.91	.91
63	.83	.83	.84	.84	.85	.85	.86	.86	.87	.87	.88	.89	.89	.90	.91
64	.82	.82	.83	.83	.84	.84	.85	.85	.86	.87	.87	.88	.89	.89	.90
65	.81	.81	.81	.82	.82	.83	.84	.84	.85	.86	.86	.87	.88	.88	.89
66	.79	.80	.80	.81	.81	.82	.82	.83	.84	.84	.85	.86	.87	.88	.88
67	.78	.79	.79	.80	.80	.81	.81	.82	.83	.83	.84	.85	.86	.87	.87
68	.77	.77	.78	.78	.79	.79	.80	.81	.81	.82	.83	.84	.85	.86	.86
69	.76	.76	.77	.77	.78	.78	.79	.79	.80	.81	.82	.83	.84	.84	.85
70	.74	.75	.75	.76	.76	.77	.78	.78	.79	.80	.81	.81	.82	.83	.84

Options 1-E, 2-E, 3-E: Equated Plan Pensions

You may combine the Equated Retirement Plan with Option 1, 2 or 3 if you are under age 61 and not a disability applicant.

The Equated Plan provides a higher pension every month until age 62, when the monthly pension permanently decreases to a lower amount than Option 1, 2 or 3 alone would provide.

The intent of the Equated Plan is for your pension from MPERS to decrease at age 62 by approximately the same amount as the Social Security benefit you can apply for and receive at that time. This means that your MPERS pension until age 62 should be about the same amount as your combined MPERS pension and Social Security benefit after age 62.

The before-age-62 and after-age-62 amounts used in the Equated Plan may be based on your estimated age 62 Social Security benefit determined by MPERS. Or, you may obtain your actual projected Social Security benefit directly from the Social Security Administration and furnish that amount to MPERS to use in your Equated Plan calculation.

A Social Security benefit estimated by MPERS is based on your final average compensation, age at retirement and only service you performed as a public school employee. Your actual Social Security benefit may vary from the estimate. However, no adjustment at age 62 can be made to a pension should the actual Social Security benefit differ.

The Equated Plan does not affect a survivor pension. If you choose a survivor option combined with the Equated Plan (Option 2-E or 3-E) your beneficiary will receive the applicable Option 2 or 3 amount beginning the month following your death. If your beneficiary dies before you, your pension will revert to Option 1-E.

The Equated Plan does not affect any post-retirement increases from either MPERS or Social Security.

To calculate your estimated pension before age 62 and after age 62 using the Equated Plan, contact MPERS in writing or by FAX, e-mail or telephone for additional information. You will need to provide your age upon retirement (e.g., 59 years and 10 months) and your age 62 Social Security benefit you obtained from the Social Security Administration. If you prefer MPERS estimate your Social Security benefit, provide your years of Michigan public school service credit upon retirement and your final average compensation.

	Option 1	Option 2	Option 3
1. Write your applicable estimated pension here.	\$	\$	\$
	Option 1-E	Option 2-E	Option 3-E
2. Write the pre-62 advance amount and total.	+	+	+
3. This is the estimated monthly pension you will receive to age 62.	\$	\$	\$
4. Write the age-62 permanent reduction amount and subtract.	-	-	-
5. This is the estimated MPERS monthly pension you will receive at age 62.	\$	\$	\$

Options 1-E, 2-E, 3-E — Equated Plan Pensions

Examples			
	Option 1	Option 2	Option 3
1. Write your applicable monthly pension here.	\$1,125.00	\$925.50	\$1,012.50
	Option 1-E	Option 2-E	Option 3-E
2. Write the pre-62 advance amount here.	+685.00	+685.00	+685.00
3. This is the estimated monthly pension you will receive to age 62.	\$1,810.00	\$1,610.50	\$1,697.50
4. Write the age-62 permanent reduction amount and subtract.	-270.00	-270.00	-270.00
5. This is the estimated MPERS monthly pension you will receive at age 62.	\$1,540.00	\$1,340.50	\$1,427.50

Post-retirement increases

The Member Investment Plan (MIP) provides permanent post-retirement increases. The increases are equal to three percent (.03) of your initial pension under Option 1, 2 or 3, whichever you choose.

The first increase is permanently added to your monthly pension the second October following your retirement. This same amount is added again each following October. The increases are permanent and cumulative, not compounded.

The Equated Plan does not affect the amount of your MIP increase.

If you choose Option 2 or 2-E, upon your death your beneficiary will continue to receive the same increase you were receiving.

If you choose Option 3 or 3-E, upon your death your beneficiary will receive one-half (50%) of the MIP increase you were receiving.

	Option 1	Option 2	Option 3
1. Write your applicable estimated pension and multiply.			
2. This amount is permanently added to your monthly pension each October beginning the second October following your retirement.	x .03 \$	x .03 \$	x .03 \$

EXAMPLES

	Option 1	Option 2	Option 3
1. Write your applicable estimated pension and multiply.	\$1,125.00	\$922.50	\$1,012.50
2. This amount is permanently added to your monthly pension each October beginning the second October following your retirement.	x .03 \$33.75	x .03 \$27.67	x .03 \$30.37

OPTION 1 ESTIMATE CHART — This chart can be used to determine your annual Option 1 pension or as a review of your calculations. The amount on page 49, line 7 approximates an estimate from this chart. If there is a discrepancy, check your calculations. Locate your average wage in the first column below. Then move to the right on the same line to the column for the years of service credit which you have. The amount in that column is your estimated annual pension using the Option 1 formula. If your average wage or service credit is not shown, your pension will be proportionately between the column or line before and after.

Average Wage	Value Per Year	Years of Service Credit															
		10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40
5,000	73.00	730	876	1,050	1,230	1,350	1,500	1,650	1,800	1,950	2,100	2,250	2,400	2,550	2,700	2,850	3,000
6,000	87.60	876	1,050	1,230	1,410	1,590	1,770	1,950	2,130	2,310	2,490	2,670	2,850	3,030	3,210	3,390	3,570
7,000	105.00	1,050	1,260	1,470	1,680	1,890	2,100	2,310	2,520	2,730	2,940	3,150	3,360	3,570	3,780	3,990	4,200
8,000	126.00	1,260	1,512	1,764	2,016	2,268	2,520	2,772	3,024	3,276	3,528	3,780	4,032	4,284	4,536	4,788	5,040
9,000	144.00	1,440	1,728	2,016	2,304	2,592	2,880	3,168	3,456	3,744	4,032	4,320	4,608	4,896	5,184	5,472	5,760
10,000	165.00	1,650	1,980	2,310	2,640	2,970	3,300	3,630	3,960	4,290	4,620	4,950	5,280	5,610	5,940	6,270	6,600
11,000	180.00	1,800	2,160	2,520	2,880	3,240	3,600	3,960	4,320	4,680	5,040	5,400	5,760	6,120	6,480	6,840	7,200
12,000	195.00	1,950	2,340	2,730	3,120	3,510	3,900	4,290	4,680	5,070	5,460	5,850	6,240	6,630	7,020	7,410	7,800
13,000	210.00	2,100	2,520	2,940	3,360	3,780	4,200	4,620	5,040	5,460	5,880	6,300	6,720	7,140	7,560	7,980	8,400
14,000	225.00	2,250	2,700	3,150	3,600	4,050	4,500	4,950	5,400	5,850	6,300	6,750	7,200	7,650	8,100	8,550	9,000
15,000	240.00	2,400	2,880	3,360	3,840	4,320	4,800	5,280	5,760	6,240	6,720	7,200	7,680	8,160	8,640	9,120	9,600
16,000	255.00	2,550	3,060	3,570	4,080	4,590	5,100	5,610	6,120	6,630	7,140	7,650	8,160	8,670	9,180	9,690	10,200
17,000	270.00	2,700	3,240	3,780	4,320	4,860	5,400	5,940	6,480	7,020	7,560	8,100	8,640	9,180	9,720	10,260	10,800
18,000	285.00	2,850	3,420	3,990	4,560	5,130	5,700	6,270	6,840	7,410	7,980	8,550	9,120	9,690	10,260	10,830	11,400
20,000	300.00	3,000	3,600	4,200	4,800	5,400	6,000	6,600	7,200	7,800	8,400	9,000	9,600	10,200	10,800	11,400	12,000
21,000	315.00	3,150	3,780	4,410	5,040	5,670	6,300	6,930	7,560	8,190	8,820	9,450	10,080	10,710	11,340	11,970	12,600
22,000	330.00	3,300	3,960	4,620	5,280	5,940	6,600	7,260	7,920	8,580	9,240	9,900	10,560	11,220	11,880	12,540	13,200
23,000	345.00	3,450	4,140	4,830	5,520	6,210	6,900	7,590	8,280	8,970	9,660	10,350	11,040	11,730	12,420	13,110	13,800
24,000	360.00	3,600	4,320	5,040	5,760	6,480	7,200	7,920	8,640	9,360	10,080	10,800	11,520	12,240	12,960	13,680	14,400
25,000	375.00	3,750	4,500	5,250	6,000	6,750	7,500	8,250	9,000	9,750	10,500	11,250	12,000	12,750	13,500	14,250	15,000
26,000	390.00	3,900	4,680	5,460	6,240	7,020	7,800	8,580	9,360	10,140	10,920	11,700	12,480	13,260	14,040	14,820	15,600
27,000	405.00	4,050	4,860	5,670	6,480	7,290	8,100	8,910	9,720	10,530	11,340	12,150	12,960	13,770	14,580	15,390	16,200
28,000	420.00	4,200	5,040	5,880	6,720	7,560	8,400	9,240	10,080	10,920	11,760	12,600	13,440	14,280	15,120	15,960	16,800
29,000	435.00	4,350	5,220	6,090	6,960	7,830	8,700	9,570	10,440	11,310	12,180	13,050	13,920	14,790	15,660	16,530	17,400
30,000	450.00	4,500	5,400	6,300	7,200	8,100	9,000	9,900	10,800	11,700	12,600	13,500	14,400	15,300	16,200	17,100	18,000
31,000	465.00	4,650	5,580	6,510	7,440	8,370	9,300	10,230	11,160	12,090	13,020	13,950	14,880	15,810	16,740	17,670	18,600
32,000	480.00	4,800	5,760	6,720	7,680	8,640	9,600	10,560	11,520	12,480	13,440	14,400	15,360	16,320	17,280	18,240	19,200
33,000	495.00	4,950	5,940	6,930	7,920	8,910	9,900	10,890	11,880	12,870	13,860	14,850	15,840	16,830	17,820	18,810	19,800
34,000	510.00	5,100	6,120	7,140	8,160	9,180	10,200	11,220	12,240	13,260	14,280	15,300	16,320	17,340	18,360	19,380	20,400
35,000	525.00	5,250	6,300	7,350	8,400	9,450	10,500	11,550	12,600	13,650	14,700	15,750	16,800	17,850	18,900	19,950	21,000
36,000	540.00	5,400	6,480	7,560	8,640	9,720	10,800	11,880	12,960	14,040	15,120	16,200	17,280	18,360	19,440	20,520	21,600
37,000	555.00	5,550	6,660	7,770	8,880	9,990	11,100	12,210	13,320	14,430	15,540	16,650	17,760	18,870	19,980	21,090	22,200
38,000	570.00	5,700	6,840	7,980	9,120	10,260	11,400	12,540	13,680	14,820	15,960	17,100	18,240	19,380	20,520	21,660	22,800
39,000	585.00	5,850	7,020	8,190	9,360	10,530	11,700	12,870	14,040	15,210	16,380	17,550	18,720	19,890	21,060	22,230	23,400
40,000	600.00	6,000	7,200	8,400	9,600	10,800	12,000	13,200	14,400	15,600	16,800	18,000	19,200	20,400	21,600	22,800	24,000
41,000	615.00	6,150	7,380	8,610	9,840	11,070	12,300	13,530	14,760	15,990	17,220	18,450	19,680	20,910	22,140	23,370	24,600
42,000	630.00	6,300	7,560	8,820	10,080	11,340	12,600	13,860	15,120	16,380	17,640	18,900	20,160	21,420	22,680	23,940	25,200
43,000	645.00	6,450	7,740	9,030	10,320	11,610	12,900	14,190	15,480	16,770	18,060	19,350	20,640	21,930	23,220	24,510	25,800
44,000	660.00	6,600	7,920	9,240	10,560	11,880	13,200	14,520	15,840	17,160	18,480	19,800	21,120	22,440	23,760	25,080	26,400
45,000	675.00	6,750	8,100	9,450	10,800	12,150	13,500	14,850	16,200	17,550	18,900	20,250	21,600	22,950	24,300	25,650	27,000
46,000	690.00	6,900	8,280	9,660	11,040	12,420	13,800	15,180	16,560	17,940	19,320	20,700	22,080	23,460	24,840	26,220	27,600
47,000	705.00	7,050	8,460	9,870	11,280	12,690	14,100	15,510	16,920	18,330	19,740	21,150	22,560	23,970	25,380	26,790	28,200
48,000	720.00	7,200	8,640	10,080	11,520	12,960	14,400	15,840	17,280	18,720	20,160	21,600	23,040	24,480	25,920	27,360	28,800
49,000	735.00	7,350	8,820	10,260	11,760	13,230	14,700	16,170	17,640	19,110	20,580	22,050	23,520	24,990	26,460	27,930	29,400
50,000	750.00	7,500	9,000	10,500	12,000	13,500	15,000	16,500	18,000	19,500	21,000	22,500	24,000	25,500	27,000	28,500	30,000
51,000	765.00	7,650	9,180	10,710	12,240	13,770	15,300	16,830	18,360	19,890	21,420	22,950	24,480	26,010	27,540	29,070	30,600
52,000	780.00	7,800	9,360	10,920	12,480	14,040	15,600	17,160	18,720	20,280	21,840	23,400	24,960	26,520	28,080	29,640	31,200
53,000	795.00	7,950	9,540	11,130	12,720	14,310	15,900	17,490	19,080	20,670	22,260	23,850	25,440	27,030	28,620	30,210	31,800
54,000	810.00	8,100	9,720	11,340	12,960	14,580	16,200	17,820	19,440	21,060	22,680	24,300	25,920	27,540	29,160	30,780	32,400
55,000	825.00	8,250	9,900	11,550	13,200	14,850	16,500	18,150	19,800	21,450	23,100	24,750	26,400	28,050	29,700	31,350	33,000
56,000	840.00	8,400	10,080	11,760	13,440	15,120	16,800	18,480	20,160	21,840	23,520	25,200	26,880	28,560	30,240	31,920	33,600

APPENDIX B

Member's Statement of Account

Individual *Member's Statements of Account* for the school fiscal year ending June 30 are mailed to your home each year. If your home address is not on file with MPSERS, your statement will be mailed to your primary reporting unit.

Your *Member's Statement of Account* shows the wages and service hours reported to MPSERS, along with other important data about your account. Because your future benefits will be determined by the wages and service hours reported to MPSERS, you should carefully review the statement for accuracy. If you think the wages and/or service hours have been reported inaccurately, notify your public school business/payroll office(s). Report any other inaccuracies, in writing, to MPSERS. Be sure to include your Social Security number and mailing address in your request.

Contributions, payments and interest

The Member Investment Plan (MIP) account balance reflects contributions and interest credited through June 30. On July 1, interest is posted on your MIP account balance as of the previous July 1. The Other Employee Contributions (OEC) account balance shows any personal contributions you made during the contributory period and payments for buy-in credit, if any, processed by June 30. 6% interest on your OEC balance is posted June 30 for the balance as of the previous June 30. Service

performed, contributions paid and any other payments processed after June 30 will show on future statements.

Service credit total

If MPSERS has evaluated your service, your *Member's Statement of Account* shows your total years of service credit. The cumulative total includes your MPSERS service credit and any buy-in credit purchased as of the end of the school fiscal year represented by the statement.

On the following page is a sample of the *Member's Statement of Account*.

MEMBER'S STATEMENT OF ACCOUNT
Michigan Public School Employees Retirement System (MPERS)
P.O. Box 30026, Lansing, Michigan 48909

Statement prepared for: JOHN DOE
Social Security Number: 000-00-0000
Benefit Plan: MEMBER INVESTMENT PLAN
Beneficiary: MARY DOE

Birthdate: 08-12-52
Sex: MALE

Beneficiary Birthdate: 12-10-52

Following reflects your Retirement Account Totals as of June 30, 1996

Contributions	\$3,885.50	Other Employee Contributions (OEC)*	\$19,696.70
Interest	\$172.98	OEC Interest	\$1,937.68
Account Balance	\$4,058.48	OEC Account Balance**	\$21,634.38

Retirement Credit on 6/30/96 -- Reported: 4.1 Purchased: 10.4 Total: 4.1

Contributions paid by your employer are not deposited into your individual account, reflected on this statement, and not refundable to you or your employer.

Interest is posted 6/30/97 to the 6/30/96 balance if still on deposit 6/30/97.

Following 7/1/95 through 6/30/96 transactions are included in above totals:

1996 Reported Credit	1.0	MIP Contributions	\$1,149.27
Additional Credit Payments	\$2,774.34	MIP Interest	\$119.49
		OEC Interest	\$1,067.55

School Agency -----	1995/96:	--- Wages	MIP Contrib	--- Hours
BY PUBLIC SCHOOLS		\$29,867.40	\$1,149.27	1,092.00

LS \$29,867.40 \$1,149.27 CREDIT: 1.0

NOTE TO MIP MEMBERS: The MIP account balance on this statement shows the balance in your MIP account as of June 30, 1996. On July 1, 1996, 8.14% interest was posted to your July 1, 1995, MIP account balance and will be reflected on your 1996/97 Member's Statement of Account.

If your total years of service credit is shown above, that total includes MPERS credited service you performed through June 30, 1996, and additional service credit buy-ins, if any, processed through June 30, 1996.

Service performed and buy-ins processed after June 30, 1996, are not included in this statement. Future statements will show updated, credited service totals.

If you have questions concerning the service credit shown on your statement, please write to the Retirement System.

If you need further explanation call MPERS at (517) 322-6000 and choose Member Statements of Account from the main menu.

1995/96 MEMBER'S STATEMENT OF ACCOUNT

PREPARED FOR: JOHN DOE

SSN: 000-00-0000

DISTRICT CODE: 2885
SCHOOL AGENCY: SHELBY PUBLIC SCHOOLS

GENERAL INFORMATION

Public School Employees are participants in the Michigan Public School Employees Retirement System (MPSERS), an IRS qualified retirement plan. Future benefits are based upon your retirement plan (either the Member Investment Plan (MIP) or the Basic Plan), and the wages and service reported to MPSERS by your employer(s). You should review this Statement for accuracy. If you believe that the wages, hours, or contributions for the 1995/96 school fiscal year are incorrect, contact your payroll office to make any necessary corrections. Otherwise contact MPSERS at (517) 322-6000 and choose Member Statements of Account from the main menu.

Before terminating your employment, please write to MPSERS to determine if you are eligible for a pension.

If you plan to retire within one year, you should contact MPSERS for retirement application forms.

For further information regarding your retirement plan, please call (517) 322-6000 and ask for a copy of the "MPSERS Guidelines". You may also attend a Pre-Retirement Information Meeting and can request a copy of the meeting schedule.

EXPLANATION OF STATEMENT

Other Employee Contributions (OEC) are moneys withheld from your earnings prior to July 1, 1977, MIP Window payments, unreported MIP contribution payments, and/or payments made to purchase additional service credit. Interest is posted June 30 on all OEC money in your account as of the previous June 30. The interest totals shown are for your information only; interest is not taxable at this time.

The service credit information listed is subject to future audit by MPSERS. One year of retirement credit is granted for working at least 170 days at 6 or more hours per day within the school fiscal year of July 1 through June 30. You receive service credit for hours worked -- up to a maximum of 378 hours -- in each calendar quarter. No more than one year of credit may be earned in one school fiscal year. For example, 170 days at 6 hours per day (1020 hours) = 1.0 year; likewise, 260 days at 8 hours per day (2080 hours) = 1.0 year. Part-time service earns proportionate credit. For example, 170 days at 3 hours per day = 0.5 year; 185 days at 4 hours per day = 0.7 year.

"MULTIPLE", if shown for your beneficiary designation, indicates that you have named more than one beneficiary.

APPENDIX C:

Eligible Domestic Relations Order & Divorce before retirement

If you are employed by a Michigan public school when you divorce, the Court may order MPSERS to pay a portion of your pension to an alternate payee, typically your former spouse or dependent child.

Before MPSERS can legally carry out the Court's ruling, the judge must issue a specific type of order, known as an Eligible Domestic Relations Order, or EDRO. Your EDRO must be on file with MPSERS before your retirement effective date.

An EDRO is a negotiated agreement between divorcing parties, subject to approval by the Court. An EDRO is not necessary if both parties agree that no pension benefit will be shared in the divorce settlement.

By law, an EDRO must contain specific information in a specific format. Write, call, FAX or e-mail MPSERS for a sample EDRO.

Two Michigan laws control the division of your pension during divorce. These are:

- The Eligible Domestic Relations Order (EDRO) Act (1991 P. A. 46); and
- The Michigan Public School Employees Retirement Act (1980 P.A. 300, as amended).

Before MPSERS can implement an EDRO, it must comply with the provisions of both these laws.

The EDRO Act does not apply to a divorce that occurs after retirement. However, the MPSERS retirement law provides that if you chose a survivor option and divorce after retirement, your option may be changed to a single life pension, providing MPSERS receives a court order to make the change.

An EDRO may not require a benefit MPSERS does not otherwise provide or a form of payment the EDRO act does not provide. It cannot order MPSERS to pay an increased benefit based on actuarial value or to make payment to an alternate payee that is payable to another alternate payee under a previously filed EDRO.

An EDRO applies only to the pension portion of your MPSERS benefit package. It cannot order MPSERS insurance coverage benefits for your alternate payee.

APPENDIX D

Financial Planning Information

Retirement planning begins with two questions: How much income will you need in retirement? Where will the money come from?

Ensuring you will have enough money in retirement to maintain the lifestyle you wish to lead is a fundamental concern. As you evaluate your situation, keep in mind that most of your retirement income will come from three sources:

- Your MPERS pension;
- Social Security;
- Income from personal savings and investments.

You may have other income sources, such as post-retirement employment, a spouse's income, an estate or a trust. However, for the purposes of this discussion, these are ignored because of their special or temporary nature.

How much income do you need to maintain your standard of living? Retirement planners agree that 60% to 80% of the final year's gross salary is necessary. That general guideline may need to be adjusted for your particular circumstances. For instance, you may need more income if you plan to relocate to an area with a higher cost of living.

For planning purposes, 75% is a good target.

Example: If your final gross salary is \$36,000, you will need about \$27,000 in your first year of retirement. ($\$36,000 \times .75 = \$27,000$)

Inflation

A typical person retiring today at age 55 should plan to live at least 30 more years. To retain the same purchasing power throughout 30 or more years of retirement, your income must increase each year to keep pace with inflation.

Consider the common items you buy every day, such as a loaf of bread or a gallon of gasoline and how their costs have increased over 30 years.

Some costs have increased by as much as 500%.

You should plan for your income to keep pace with inflation to maintain your purchasing power as it exists when you retire. To do this, you must make an educated guess what inflation will be in the coming decades. While the past is no indication of the future, inflation has averaged 6.3% per year over the past 20 years.

While many of your expenses are apt to increase with inflation, some sources of your retirement income may not. How will income from your three primary sources increase during your retirement years?

MPERS Pension: If you belong to the Member Investment Plan (MIP), you will receive a 3% cumulative non-compounding increase each October. If you belong to the Basic Plan, you receive no guaranteed annual adjustments. You will receive a "13th check" in those years that MPERS' investment earnings exceed expectations, but those occurrences are neither guaranteed nor predictable.

A Basic Plan member will need to place far more reliance on personal savings and investments.

Social Security: Benefits are indexed to the Consumer Price Index and adjusted each January.

Personal Savings and Investments: As inflation increases your income needs, your savings will be depleted at a faster rate. If your investment earnings do not replace that income adequately, you are at risk of outliving your savings.

Your MPERS pension is explained within this Guidelines booklet. You should contact the Social Security Administration about your Social Security benefits. Now you need to consider how you're going to supplement those two income sources with your own personal savings.

Choice of investments

Investments vary according to risk and expected return. Investments that are traditionally considered safe, such as passbook savings accounts, generally provide a low rate of return. To get a higher rate of return, you must be willing to assume some risk — being aware that you could lose some or all of your money. You have to decide how high a rate of return you want and how much risk you're willing to assume to achieve a high rate of return.

Another factor in choosing your personal investments is liquidity. Liquidity refers to how easily your investment can be converted into cash. For example, a savings account is a liquid investment, because you can easily make a withdrawal.

If you invest a substantial amount in nonliquid assets, such as stock, you may lose money if you have to convert them to cash. That's because you may be forced to sell at a loss if you need money quickly for an emergency.

Here are some investment strategy options you may want to consider. Remember, you must keep in mind your own retirement income needs, as well as the investment risk you're comfortable with.

Tax-sheltered annuities

A tax-sheltered annuity (TSA), available to most public school employees, is a tax-deferred investment. That means the invested dollars are not subject to tax until you receive them. Your money grows faster, and your take-home pay is greater than if you save the same or equivalent amount on an after-tax basis.

TSAs can earn either a fixed or variable rate. Fixed-rate annuities provide a specified return, similar to Treasury bills, government bonds and corporate bonds. Variable-rate annuities invest in stock and provide a return that changes according to market conditions.

Diversification of investments

Many investment counselors favor diversification as a way to maximize return and lessen risk. For example, early in your career you minimize stock investments because you need liquid assets to provide for emergencies. You would, therefore, keep most of your money in a checking or savings account, money market or short-term certificate of deposit (CD).

Later, when you've saved enough to meet emergencies, you may be able to afford some risk by investing in stocks to help maximize your return. If the value of your investment drops, you have many earnings years to recuperate. As you approach retirement, you should begin reducing reliance on riskier investments because you have fewer years to recuperate.

The most important ingredients in financial planning are:

- *Goal Setting*
- *Planning*
- *Action*

You must look into the future and envision when you want to retire (*Goal Setting*). Once you have an idea of when you would like to retire, it becomes a simpler matter to determine how much personal savings is required (*Planning*). The next component is to actually begin saving (*Action*). The earlier you take action, the longer your savings will be able to work for you.

This information is very general, and it is not intended to be an investment guide. Instead, MPERS wants you to be aware that you will need personal savings to supplement your retirement income; you cannot depend on your pension and Social Security alone. You may wish to consult a financial planning expert for advice appropriate to your own needs.

APPENDIX E

Acceptable Proof of Birthdate

MPSERS cannot process your retirement application until proof of your date of birth is on file. Photocopies are acceptable and need not be certified.

- I. To document your date of birth, you may file a photocopy of one of the following:
 1. Birth certificate
 2. Hospital birth record
 3. Church baptismal record established during the first few years of your life
 4. Passport
 5. A delayed birth certificate
- II. If none of the above is available and you have applied for a Social Security benefit and documented your date of birth, a statement from the Social Security administration is sufficient. This statement must contain your date of birth and explain that you have filed sufficient documentation to establish your date of birth.
- III. If you have not applied for Social Security benefits, photocopies of a minimum of three of the following documents **stating your age or date of birth** may be used. Records established early in life are preferred.
 1. A school record
 2. A church record
 3. A state or federal census record (established near your birth)
 4. A statement signed by the physician or midwife who was in attendance at the birth, as to the date of birth shown on his/her records
 5. A Bible or other family record
 6. An insurance policy
 7. A marriage record
 8. An employment record
 9. A military record
 10. A child's birth certificate that shows age of parent
 11. Some other record that shows age or date of birth; for example, hospital treatment record, labor union or fraternal record, permits, licenses, voting or registration records, or poll tax receipts.
- IV. Applicants born in foreign countries may file any of the items listed above or one of the following:
 1. A foreign passport
 2. An immigration record established upon arrival in the United States
 3. A naturalization record (citizenship paper)
 4. An alien registration card

APPENDIX F

Regional Outreach Program

Beginning in October 1997, a **Pre-Retirement Informational Meeting (PRIM)** and an opportunity to schedule an **individual counseling appointment** will be available at an Intermediate School District (ISD) near you.

As part of MPSERS' continuing effort to provide faster and better customer service, we are working with local ISDs to bring retirement information and services to a location near you.

A retirement representative will visit designated ISDs for a two-day visitation. The representative will host a PRIM on the first day and take counseling appointments both days.

For locations, maps, dates, times and how to schedule a counseling appointment you may check any of the following:

- Scheduled to begin October 1, 1997, the MPSERS Internet Homepage will have a complete schedule of each ISD visitation. See it at:
<http://www.michigan.state.mi.us/orshome/mpsers>
- Look for flyers posted in your school or ISD.
- Check with your local school district personnel office or ISD for visitations scheduled in your area.
- Call any MPSERS office for visitations scheduled in your area.

Availability of individual counseling appointments is limited. Those within one year of retirement will have preference.

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EXHIBIT 3



Your Retirement Plan

A Member Handbook
for Michigan's Public School Employees



Office of Retirement Services
Department of Management and Budget
State of Michigan

About the Office of Retirement Services

The Office of Retirement Services (ORS) is a division of the State of Michigan Department of Management and Budget. ORS administers retirement programs for Michigan's more than half million state and public school employees, judges, and state police.

About This Publication

The intent of this publication is to summarize basic plan provisions under Michigan's Public Act 300 of 1980, as amended. Current laws, rates, and factors are subject to change. Should there be discrepancies between this publication and the actual law, the provisions of the law govern.

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I. About Your Retirement Plan

As a member of Michigan's Public School Employees Retirement System, you are eligible for one of the best public pensions around. Because it is so essential to plan for your retirement early in life, this handbook aims to give you enough general information about your pension so that—between your pension, social security, and personal savings—your retirement is all you hope it will be.

Besides some general history about the system and its administration, this book explains how and when you will qualify for a pension and how your pension will be calculated. It includes tips for enhancing your retirement by purchasing service credit. You'll also find information you'll need if you leave public school employment, as well as an overview of the plan's disability protection, insurance, and survivor benefits.

This publication is general in nature. We encourage you to take a look at our other publications and the ORS website if you're seeking more specific information on a particular topic.

II. Administration of the Plan

Public Act 300 – Your Retirement Plan Law

The operation of the Public School Employees Retirement System is controlled by the Michigan Public School Employees Retirement Act (Public Act 300 of 1980), as amended. Any changes to the Act require passage by the Michigan Legislature.

The plan is administered by the Office of Retirement Services—ORS—with the oversight of a 12-member board. One board member represents state government; the remaining members are appointed by the governor to represent active and retired public school employees.

Throughout your working career, your employer takes care of your pension plan deductions, wage and service records, and plan contributions. Regular reports are sent to ORS to become part of your personal pension record. When it's time to retire, your employer hands off all your final records to ORS, and we become your partner in retirement.



The Basic Plan and the Member Investment Plan

Until 1974, both employers and employees contributed to the pension fund. It was then a *contributory plan*. By 1977 the system was funded entirely through employer contributions—a *noncontributory plan* known as the *Basic Plan*.

In late 1986 the *Member Investment Plan (MIP)* was introduced. This contributory plan provides more generous pension benefit options. Those who were Basic Plan members at the time could choose the MIP, which took effect January 1, 1987. Basic Plan members again had the opportunity to select the MIP in the fall of 1991.

The majority of our members today are in the Member Investment Plan. For the most part, this publication describes that plan, not the Basic Plan. The exceptions, mostly related to contribution rates and pension calculations, are noted. You can compare the key differences between the two plans by referring to Appendix B: MIP-Basic Plan Comparison.

Who Is a Member?

You become a member and begin accruing credit toward a pension on the first day you work in a participating Michigan educational institution. Members include the following:

- Employees of K-12 public school districts.
- Employees of intermediate school districts.
- Employees of district libraries.
- Employees of some public school academies.
- Employees of tax-supported community colleges.
- Certain employees who became employed before January 1, 1996, by one of these seven universities: Central, Eastern, Northern, and Western Michigan Universities, Ferris State and Lake Superior State Universities, and Michigan Technological University.

Note: When you see the terms *members* and *schools* throughout this handbook, we are referring to the employees and employers described on the previous page who participate in the Public School Employees Retirement System.

Exceptions to membership.

The following employees are not members of the Public School Employees Retirement System:

- A person who has retired from the system and is receiving a pension (even if he or she returns to public school employment).
- A person employed by a public school while enrolled as a full-time student in that system.
- A person under the age of 19 employed in a temporary, intermittent, or irregular seasonal or athletic position, whether a student or not.
- An instructor or administrator of a community college or eligible university who elected an *optional retirement plan* (such as TIAA/CREF) offered under Public Act 156 of 1967, as amended.
- A new employee of a library or museum hired after it separated from the school district.
- A person who is working in the public school system only through a program resulting from the Federal Work Force Investment Act of 1998; Michigan Community Service Corps (Public Act 259 of 1983); Senior Community Service Employment Program (Public Law 89-73); or Work First Program. *Note:* Administrators of any of these programs who were previously members of the retirement system, and who remain in the employ of the school, may retain membership in the retirement system.



- An employee enrolled in a transitional public employment program.
- A person enrolled in a federally-funded neighborhood youth corps program or similar training program operated by an intermediate school district to prevent or rehabilitate high school dropouts.
- A person who is working for the school for the sole purpose of a political election.
- A person working in a public school who is contracted by an outside company, rather than hired directly by the school.
- A person working in a public school who is self-employed as an independent contractor.

You may be active, deferred, or retired.

Participants in the retirement system are classified in one of the following categories:

- **Active Member.** You are on the payroll of one of the participating Michigan public school systems described in this section. You remain an active member for up to one year while laid off, or as long as an employee-employer relationship exists while on a leave of absence.
- **Deferred Member.** You leave public school employment after you are vested but before you're old enough to draw your pension. You are *vested* for your pension—meaning you have sufficient service to qualify for a benefit but don't yet meet the age requirement—when you have the equivalent of 10 years of full-time employment. You remain in deferred status, as long as your contributions remain on account, until you apply for your pension at age 60 and become a retiree.
- **Retiree.** You are receiving a pension (disability or retirement) from the retirement system.

The retirement system is funded by contributions of public school employers and employees, and by the investment earnings on these contributions. All contributions are a funding source for pensions and do not result in individual benefits in addition to the pension.

Who Contributes What

Employer contributions.

Each year an actuary determines how much the public schools need to contribute to fund their portion of member benefits. These contributions are not refundable to you or your employee.

Your contributions.

As a MIP participant, you also contribute a percentage of your salary to the pension reserve fund. Your contribution rate depends on when you enrolled in the MIP plan.

- If you elected the MIP before January 1, 1990, OR were a Basic Plan participant who enrolled in the MIP by January 1, 1993, you contribute 3.9 percent of your pretax salary.
- If you are a new member who began Michigan public school employment January 1, 1990, or later, OR are a returning member who did not work between January 1, 1987, and December 31, 1989, you contribute pretax contributions based on the following chart:

Up to \$5,000	3% of compensation (up to \$150 total)
\$5,000 to \$15,000	\$150, plus 3.6% of compensation between \$5,000 and \$15,000 (up to \$510 total)
Over \$15,000	\$510, plus 4.3% of compensation over \$15,000

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In addition to your MIP contributions, you might have other personal contributions—from earnings before July 1, 1977, or from purchased service credit—on account.

We keep track of all your contributions, and send you an update every year.

Your Contribution Account

Though all member and employer contributions go into the reserve fund used to pay all monthly pensions, we keep a separate account of your contributions. We do this for a couple of reasons:

- **Taxability.** Contributions you make on a tax-deferred basis will become taxable when you receive payments. We need to be able to tell the IRS how much of your pension is taxable at retirement, and how much you've already paid taxes on.
- **Interest.** Personal contributions earn interest, and different rates apply depending on the type and time of the contribution. Ordinarily, this will only be important if you terminate employment and take a refund of contributions.
- **Refunds.** If you leave the retirement system before you're eligible for a pension, you can ask for a refund of your personal contributions, forfeiting all your rights to a monthly pension.

Because we keep detailed account balances and provide them to plan members, they often think that they'll get this amount over and above their calculated pension when they retire. This is not so. It is only when you leave the system before you're eligible for a pension that personal contributions could be refunded. This is explained in Section V – If You Leave Public School Employment.

You earn interest on your contributions.

As your employer forwards your MIP contributions to ORS, we credit your MIP account. At the close of each school fiscal year, we also credit you with interest on MIP contributions that have been on account for a full year. The interest rate on MIP contributions varies, because it is statutorily determined each year based on the rate of investment return.

If you have purchased service credit or have any post-tax contributions from years when the plan was contributory, we will keep track of those personal contributions separately. These funds earn 6 percent interest after they have been on account for a full year. As with MIP accounts, interest is posted at the end of each school fiscal year.

Your Annual Member Statement

Each year we send all active (working) members a *Member Statement*. While the primary purpose of the statement is to help you plan for your retirement, it also gives you an update on your account balance and account activity through June 30, the end of the fiscal year.

What's on your statement.

The statement will list the wage, service, and contribution amounts reported by your employer(s) during the last fiscal school year, and tell you how much service credit you earned in the year—typically 1.0 year of credit if you worked all year, full-time. You'll also find your cumulative service credit total.

It will show your MIP contributions, interest, and balance, as well as any activity and interest on your personal contributions, if you have any.

Your statement will reflect the person or persons you have named as your beneficiary, and may include other information that affects your pension or retirement planning.

2006 Member Statement
Public School Employees Retirement System

Member Name: [Name]
Address: [Address]
City: [City] State: [State] Zip: [Zip]
Phone: [Phone]

Your statement
This statement reports the wages, service, and contributions reported by your employer(s) during the last fiscal school year, and tells you how much service credit you earned in the year—typically 1.0 year of credit if you worked all year, full-time. You'll also find your cumulative service credit total.

Your statement also includes:

- Wages: [Amount]
- Service Credit: [Amount]
- MIP Contributions: [Amount]
- Personal Contributions: [Amount]
- Interest: [Amount]
- Balance: [Amount]

What's on your statement.
The statement will list the wage, service, and contribution amounts reported by your employer(s) during the last fiscal school year, and tell you how much service credit you earned in the year—typically 1.0 year of credit if you worked all year, full-time. You'll also find your cumulative service credit total.

It will show your MIP contributions, interest, and balance, as well as any activity and interest on your personal contributions, if you have any.

Your statement will reflect the person or persons you have named as your beneficiary, and may include other information that affects your pension or retirement planning.

What to do with your statement.

Review your annual statement carefully for accuracy. If you think there are errors in your wage, contribution, or service for the contribution period, or to change your address, ask your school payroll officer to send us the correction. ORS can assist with any cumulative totals and interest questions. Also, verify that your beneficiary is correct; if not, be sure to send us a correction as explained in Section V.

We also suggest that you keep your statements in a safe place so that you have a point of comparison when next year's statement arrives.



IV

General Plan Provisions

As a vested member of the Public School Employees Retirement System, you can look forward to a monthly retirement pension benefit for your lifetime. This section explains when you'll be eligible, how to estimate the amount of your pension, your different payment options, and some general information on how service credit is earned and purchased. For more complete details about your retirement benefit, ask for the ORS publication *Retirement Readiness: A Two-Year Countdown*.

Qualifying for Your Pension

To be eligible for a monthly retirement pension, you must meet minimum age and service requirements.

Full Retirement - MIP Member.

As a MIP member, you will qualify for *full retirement* under any of the following provisions:

- **MIP 46 with 30.** You qualify for full retirement at any age with at least 30 years of service. However, if you have purchased universal buy-in service credit, you must be at least age 46. At least 15 years of service credit must have been earned through the Michigan Public School Employees Retirement System.
- **MIP 60 with 10.** You are eligible for your pension at age 60 with at least 10 years of service credit.
- **MIP 60 with 5.** If you are age 60 and you have at least 5 years of service credit, you qualify for a pension if at least 0.1 years of service credit have been earned in each of the five school fiscal years immediately before your retirement effective date and you terminated your public school service immediately before your retirement effective date.



Full Retirement – Basic Member.

As a Basic Plan member, you qualify for a full retirement under the following retirement provisions:

- **Basic 55 with 30.** You qualify for your pension when you are at least age 55 and have 30 or more years of service credit. At least 15 years of service credit must have been earned through the Michigan Public School Employees Retirement System.
- **Basic 60 with 10.** You qualify for a pension at age 60 with at least 10 years of service credit.

Early Reduced Retirement – MIP and Basic Members.

Whether you are a MIP or Basic Plan member, you can take an *early reduced retirement* as early as age 55 if you have at least 15 but less than 30 years of service. Your pension amount is permanently reduced by one-half of one percent for each month you take your pension before age 60 (6 percent per year).

You must be an active member to be eligible for the early reduced benefit. If you are a deferred member you don't qualify for the early reduced pension.

To retire under the early reduced provision, you must meet all of the following conditions:

- You worked through your 55th birthday (an exception may apply if you were born in a summer month).
- You have at least 15 but fewer than 30 years of service credit, with at least 10 years of service credit earned under this system.
- You earned at least 0.1 year of service credit in each of the 5 school fiscal years immediately before your retirement effective date. The fiscal year in which you are retiring counts in the 5 years.
- You terminated Michigan public school service immediately before your retirement effective date.

If you're thinking about an early reduced retirement, we suggest you check with ORS before you terminate employment to be sure you qualify.

If you become disabled.

There are special eligibility and calculation provisions for those who become disabled while a public school employee. This is explained in Section VI – Additional Benefits for You and Your Dependents, and in the ORS publication *If You Become Disabled: Your Disability Protection*.

How Much Will You Get?

The pension formula.

Your annual benefit is based on a formula that multiplies your *final average compensation* times a pension factor of 1.5 percent times your *years of service*.

The Pension Formula

$$\text{FAC} \times 1.5\% \times \text{YOS}$$

Final Average Compensation Pension Factor Years Of Service

Dividing the annual benefit by 12 will tell you how much your monthly benefit will be if you elect the *straight life option*. You can also choose a *survivor option* or an *equated plan* for your pension payments.

It is important that you understand all of these concepts, because they have a direct effect on your pension amount. We briefly explain each one below:

- **Final average compensation (FAC).** For MIP members, the highest three consecutive years of earnings (36 months) are averaged to determine your final average compensation, or FAC. If you are a Basic Plan member, your highest five consecutive years of earnings (60 months) are averaged to determine your FAC.

Note: Your highest three or five consecutive years of earnings may have occurred earlier in your career. Even though we may use those years rather than your final years to calculate your benefit, we still refer to it as your final average compensation.

■ **Years of service (YOS).** Your service credit reflects the years, or fractions of years, you have worked for a Michigan public school. In general, you earn one year of service when you work 1,020 hours in a school fiscal year. No more than 30 hours can be credited in a one-week period. Credited service can also include any additional service purchased or transferred as described later in this section. For more details, see our *Enhancing Your Pension: Earning and Purchasing Service Credit* booklet.

■ **Straight life option.** If you choose this payment option, you receive the maximum monthly benefit payable throughout your lifetime, and no benefits (pension or insurance) are paid to your survivors after your death.

■ **Survivor options.** These options pay you less but continue monthly pension payments as well as health, dental, and vision insurance coverage to your beneficiary (spouse, sibling, parent, or child) if you die. You elect either the 100, 75, or 50 percent survivor option; your survivor then receives the same monthly benefit you received, 75 percent, or half of your benefit amount. The monthly pension amount is based on actuarial tables that factor in life expectancies for you and your beneficiary.



■ **Equated plan.** This plan pays you a higher pension until you are age 62, and then your monthly pension is permanently reduced based on the amount of your estimated social security benefit. You might choose to receive this equated plan "advance" on your pension if you want your total income to remain fairly level both before and after social security begins. The equated plan can be combined with a straight life or any of the survivor options.

Pension increases after you retire.

As a MIP retiree, after you've been retired a full year, each October you'll receive a fixed 3 percent increase in your monthly pension. This *postretirement increase* doesn't compound, but it does accumulate. So each October, your retirement check will increase by 3 percent of your initial pension amount.

Basic Plan members do not receive postretirement increases. Instead, a supplemental payment may be issued in those years when the plan's investment earnings exceed predictions.

Let ORS do the math.

This booklet gives some very basic methods for figuring your pension. But the calculations can get complicated when you factor in possible beneficiaries, various payment options, or want to compare different retirement dates. We can help. Log on to the ORS website at www.michigan.gov/ORSschools and navigate to the benefit estimator. This handy tool lets you key in your age, wage, and service information, and quickly estimates your future pension.



A note about divorce.

If you divorce while an active or deferred member, the court may order that a portion of your pension be paid to an *alternate payee* such as your former spouse or dependent child. The order (generally, an *eligible domestic relations order*, or *EDRO*) must contain specific information in a specific format, and must be on file with ORS prior to your retirement effective date. Details and sample language can be found in the ORS publication *Eligible Domestic Relations Orders*.

Obtaining Credit for Service

Remember, your pension amount is based, in part, on your number of years of service as a public school employee. You should know that you might be able to count certain other employment in your service credit totals. The plan allows the *granting* of service credit; it allows the *purchase* of additional service credit; and it permits you to *reinststate* service from a prior period of Michigan public school employment by repaying, with interest, any contributions to the system you might have withdrawn when you terminated.

It's worth your while to explore transferring or purchasing additional service credit. Not only would added credit increase your pension, it could help you qualify at an earlier age.

$\$35,000$ $\times 1.5\%$ $\times 30 \text{ years} = \$15,750$	\rightarrow	$\$35,000$ $\times 1.5\%$ $\times 35 \text{ years} = \$18,375$ $\$15,750 + \$2,625 = \$18,375$
Your pension		Your pension

Bear in mind that with few exceptions, purchased service isn't credited to you until you are vested, nor can you count it toward your ten-year (or five-year) minimum eligibility requirement. And in all cases, your purchase must be completed before you leave public school service.

Because each type of service credit has its own limits and restrictions and costs, please use the following information only as a general overview.

Types of service credit.

Review the following list to see what types of service credit you might be eligible for:

- Service credit may be granted (at no cost) while you are on leave for active duty military service or some weekly workers' compensation.
- You may be able to purchase or be credited for maternity, paternity, or child-rearing time; active duty military service; out-of-system public educational employment; nonpublic educational employment; state of Michigan Civil Service employment; weekly workers' compensation; or a sabbatical leave of absence.
- You can purchase *universal buy-in (UBI)* service credit, which is available to all Michigan Public School Employees Retirement System members.
- If you had a prior period of Michigan public school employment but then withdrew your contributions to the system when you left employment, you can ask to pay back the amount refunded to you, plus interest, to reinstate your prior service.

The cost of service credit.

The price of service credit depends on the type of credit as well as your age, rate of pay, and years of service. Generally, the older you are, the higher the cost. To estimate the cost of a service credit purchase, refer to the ORS website or ask for *Enhancing Your Pension: Earning and Purchasing Service Credit*.

When you apply for additional service credit, ORS checks your eligibility and determines if the credit has a cost. If no cost, you'll get a letter stating the service credit type and the amount of service (years and fractions thereof) being credited. If there is a cost, you'll receive a *Member Billing Statement* that describes the total type and amount of service credit available for you to purchase. Though it's called a "bill," you have no obligation to purchase.

Three ways to purchase.

You can buy service credit in three ways:

- **Direct payment.** Send a check or money order.
- **Tax-deferred payments (TDP).** Your payments are deducted from your paychecks by your employer. Taxes on the amount withheld are deferred until you begin receiving your monthly pension payment.
- **Plan-to-plan transfer.** Transfer or "roll over" funds from a qualified retirement plan such as a 401(a), 401(k), 403(b), 457, a qualified plan established with a previous employer, as well as a conduit IRA (individual retirement account). A traditional IRA is not eligible for a plan-to-plan transfer.

It usually
costs less
to buy
service credit
earlier in
your career.

Find out more about service credit.
If you're interested in buying service credit, explore our website or ask ORS for *Enhancing Your Pension: Earning and Purchasing Service Credit*.



V. Additional Benefits for You and Your Dependents

In this section you'll learn about your disability protection while you're an active employee, and insurance eligibility once you retire. It also explains what you (and your loved ones) can plan on should you die, and tells you how and when to designate your beneficiary.

If You Become Disabled

Your retirement plan provides protection for you and your dependents if, while you are an active employee of a participating Michigan public school, you become totally and permanently disabled and unable to perform duties for which you are trained, educated, or experienced.

You may qualify for one of two types of disability retirement benefits depending on where you acquire your injury or illness.

- If you incur a permanently disabling injury or illness at work, you may be eligible for a *duty disability* benefit. Your duty disability protection begins your first day on the job.
- If your disabling illness or injury is incurred outside of work, you may qualify for a *nonduty disability* benefit. Your nonduty disability protection begins when you are vested with the equivalent of 10 years public school employment.

Whether duty or nonduty, you must apply for a disability benefit within 12 months after you terminate employment.

Disability pensions are calculated the same as a regular retirement—multiplying your final average compensation times your years of service times a factor of 1.5 percent. If you qualify for a duty disability, we'll always credit at least 10 years of service to calculate the benefit, even if you have less service credit when your work-related illness or injury occurs.

For more information about disability benefits, request the ORS publication *If You Become Disabled: Your Disability Protection*.

Insurance in Retirement

When you retire, you may enroll yourself and your eligible dependents in the plan's medical, dental, and vision insurance. Your eligible dependents include the following:

- Your spouse. If he or she is an eligible public school retiree, you will be covered together on one contract.
- Your unmarried child by birth, legal adoption, or legal guardianship through December 31 of the year in which he or she turns age 19.
- Your unmarried child by birth, legal adoption, or legal guardianship from age 19 through December 31 of the year in which he or she reaches age 25 if a full-time student and dependent on you for support.
- Your unmarried child by birth, legal adoption, or legal guardianship age 19 or older who is physically or mentally disabled, dependent on you for support, and unable to self-sustain employment.
- Your parent or parent-in-law residing in your household.

Subsidized premiums.

If your pension is effective the first of the month after you terminate employment with a Michigan public school, you will go directly from active member status to retiree status. The retirement system pays a portion of the health, dental, and vision insurance premiums for you and your dependents. Your percentage of

the cost will be deducted from your monthly pension. Once you are eligible for Medicare, Medicare becomes your primary insurance carrier and the retirement system pays a higher percentage of your health insurance premiums.

If you are a deferred member, the amount of the premium subsidy at retirement will depend on when you terminated your public school employment and how many years of credited service you have.

Upon Your Death

Whether and what benefits are payable to your survivors depends, in part, on if your death occurs while you are active, deferred, or retired. In this section we provide some general guidelines so you can plan for your loved ones.

Naming a beneficiary.

When you first become a member of the retirement system, your employer gives you a *Beneficiary Nomination (R315C)* form. Send this form to ORS (not your payroll office) to name a survivor pension beneficiary, a refund beneficiary, change your beneficiary, or request that the default provisions of the law apply.

The default provision of the law says this: While you are actively employed, if a survivor pension benefit is payable upon your death, the retirement act automatically provides a lifetime monthly survivor benefit to your spouse, or if not married, in equal payments to your unmarried children until they reach age 18.

Note that the default provision only applies if you die while an active member. Be sure that ORS has a signed, valid beneficiary form naming one eligible survivor pension beneficiary before you terminate employment—see "If you die as a deferred member" in this section.

Before you send ORS the *Beneficiary Nomination (R315C)* form, be sure you have a good understanding of if, when, and to whom a benefit may be payable upon your death. Read the details in this section, as well as the beneficiary form, carefully.

Some of the factors that should influence your decision about whether to name a beneficiary, change a beneficiary, or use the default provisions of the law are:

- What is your marital status? Your family composition?
- What is your vesting status?
- Are you naming a survivor pension beneficiary or a refund beneficiary?
- Are you active, deferred, or retired?



If you die while an active member.

Nonduty death. If your death is not a result of an injury or illness incurred at work, it is called a *nonduty death*. A monthly pension may be payable to your *survivor pension beneficiary*. If you were vested with at least 10 years service (5 years if you were at least age 60). Basic Plan members must have at least 15 years of credited service if they are under age 60, or 10 years if they are at least age 60, for their survivors to be eligible for a survivor pension.

The nonduty death survivor benefit is payable beginning the month following your death. It is calculated as if you retired the day before you died and elected the 100 percent survivor option. Health, dental, and vision insurance coverage is also available to beneficiaries receiving a survivor pension.

If you do not have a valid *Beneficiary Nomination (R315C)* form on file with ORS (see "Naming a beneficiary" in this section) your spouse is automatically your survivor pension beneficiary. If you are not married, your unmarried minor children are automatically your beneficiaries until they reach age 18, marry, or are adopted.

If your spouse waives the pension benefit by signing the *Beneficiary Nomination (R315C)* form, you may designate any of the following eligible beneficiaries if they depend on you for at least 50 percent of their personal support: your child, your brother or sister, or your parent. You must have designated this person on the *Beneficiary Nomination (R315C)* form, and the form must be on file with ORS at the time of your death.

If you have no surviving spouse or unmarried children under 18, no continuing monthly benefit will be payable unless ORS has your valid beneficiary designation on file and the survivor pension beneficiary you named remains dependent on you/the income provided by the pension.



If you die before retirement and no monthly survivor pension is payable, any personal contributions and interest in your account will be paid to your *refund beneficiary* in a lump sum. If you haven't named a beneficiary, your contributions may be distributed by probate court order.

Duty death. If you die from a work-related injury or illness incurred during your public school employment, it is considered a *duty death*. A monthly survivor pension may be payable, regardless of your age or years of service, if a workers' compensation benefit is awarded based on your work-related injury or illness.

The duty death survivor benefit is payable beginning the month following your death, and is calculated as if you retired the day before you died and elected the 100 percent survivor option. We will use no less than 10 years of service in the pension calculation, even if you have less service credit at the time of death. Health, dental, and vision insurance coverage is also available to beneficiaries receiving a survivor pension.

If your death is duty related, a monthly survivor pension may be payable to your named beneficiary, as long as he or she meets eligibility requirements, whether you were vested or not. If a valid beneficiary nomination is not on file, the default provision allows duty-related survivor benefits to your spouse, or if not married, to your children until they reach age 18, are adopted, or marry. If you are not survived by a spouse or eligible children, your totally and permanently disabled parent who depends on you for more than 50 percent of his or her support may be eligible for the duty-related survivor pension.

If you die before retirement and no monthly survivor pension is payable, any personal contributions and interest in your account will be paid to your *refund beneficiary* in a lump sum. If you haven't named a beneficiary, your contributions may be distributed by probate court order.

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If you die as a deferred member.

If you die while your retirement is in deferred status (that is, you left public school employment after vesting but before you're old enough to draw your pension), a monthly survivor pension will be payable to your eligible beneficiary provided (1) you have at least 10 years of service credit as a MRP member, 15 years if you're a Basic Plan member; and (2) you filed a *Beneficiary Nomination (R315C)* form with ORS before you terminated employment.

As a deferred member you must have a beneficiary form on file before you terminate employment. The form must name an eligible survivor pension beneficiary because the default provision does not apply if you die as a deferred member. You can change your beneficiary while in deferred status, but only if a valid form was on file with ORS before you terminated.

The deferred monthly survivor pension becomes payable beginning the month you would have otherwise become eligible to receive your pension; it is paid as if you had chosen the 100 percent survivor option.



If you die before retirement and no monthly survivor pension is payable, any personal contributions and interest in your account will be paid to your refund beneficiary in a lump sum. If you haven't named a beneficiary, your contributions may be distributed by probate court order.

If you die after leaving employment and before being vested.

If you die after leaving public school employment and before you have sufficient service to be vested in the plan, no survivor pension is payable. Upon notification by your survivor, we will return any personal contributions and accumulated interest to your refund beneficiary or your estate.

Before you leave your job, complete a *Beneficiary Nomination (R315C)* form to designate who will receive your contributions. If no form is on file, your contributions and accumulated interest may be distributed by probate court order.

If you die after you retire.

A monthly pension, as well as continued insurance benefits, is payable only if you elected one of the survivor options when you applied for your pension. The pension can only be made to the survivor pension beneficiary you named when you filed your retirement application. You can't change your option or beneficiary choice after your pension begins.



VI. Reaching Your Retirement Goals

We've explained the roles that ORS and your employer play in your retirement readiness. In this section you'll learn the steps you should take to ensure that your retirement is all you want it to be.

Have a Plan and Follow It

It's important to remember that your pension should not be your only—or even your primary—source of income in retirement. Financial planners will tell you that, like a 3-legged stool, a secure retirement depends on a balance of social security benefits and personal savings, in addition to your pension.

In Section III we told you about the *Member Statement* that we send you every year. Your statement's arrival would be a good time to evaluate your overall retirement plan.



Review your statement, and then assess all your retirement assets. Have you estimated how much retirement income you will receive from all sources? Is your estimate between 60-80 percent of your preretirement income? Are you on target for your retirement goals? Consider trying some of the online retirement calculators for help, or talk to a financial planner.

Attend a preretirement seminar.

Want some in-depth information about your plan? Attend one of our two-hour preretirement seminars, held throughout the state all year long. Seminar attendees who are closing in on retirement age say: "I wish I'd had this information earlier in my career—I'd have done a much better job of planning!" You can check our schedule and sign up at the ORS website.

Stay in Touch With ORS

Tell us your beneficiary.

As long as you're a participant in this retirement system, be sure that ORS knows your beneficiary wishes (refer to Upon Your Death in Section V). If you have a life change such as a birth, death, marriage, or divorce, or if the beneficiary you named no longer meets the eligibility requirements, be sure to send us an updated form.

We will always honor the most recent *Beneficiary Nomination (R315C)* form on file, so it's not necessary to submit a new form each year or whenever you change jobs. However, do remember that you must have a form on file before you terminate employment and cease membership in the retirement system, otherwise a monthly survivor pension will not be payable to any person.

Tell us if your record appears incorrect.

As explained in Section III, your employer is responsible for sending us your wage, service, and contribution reports each pay period. Each year we send you a personalized *Member Statement* so you know what has been reported. If you believe your cumulative account totals are incorrect, contact us.

Tell us how we can help you.

Of course, you should also contact ORS whenever you have a question about your retirement plan. You'll find the most current plan information on our website, but we also welcome your call or visit. Complete contact information is shown inside the back cover of this book. Consider attending one of our preretirement seminars, and also take a look at our other booklets listed under Other ORS Publications.



If You Leave Public School Employment

If you leave public school employment before you're old enough to draw your pension, you will have some options regarding your retirement account. After reading this book, you know that your vesting status will affect any decisions you make. You also know that if you're vested, you must have a valid beneficiary form on file with ORS before you terminate your membership in the system.

Read our publication *Leaving Public School Employment* before you terminate so you have information you need to make the best decisions. You can find it on the ORS website, or by asking ORS or your human resource office for a copy.



VIII. We're Here to Help

We hope that this booklet answers questions you may have about your retirement plan. We also hope that you have a better understanding of the importance of preparing for retirement, including having savings goals and considering other ways to enhance your benefit.

Please don't hesitate to contact us if you have any questions. Complete contact information can be found under At Your Service at the end of this booklet.



Your Responsibilities

- Read this booklet. Share it with your loved ones, and put it with your important documents.
- Review and save the annual member statements issued by ORS describing your service totals and benefits.
- Let ORS know if you want to change your beneficiary.
- Map out your retirement goals, and monitor your plan throughout your lifetime. A secure retirement depends on a balance of your pension, personal savings, and social security.

Learn about the additional retirement topics listed under Other ORS Publications.

Other ORS Publications

The following publications are available on the ORS website, or you can email or phone ORS for a copy. Please note that our printed materials are current as of their publication date. Because retirement provisions and policies change, we encourage our customers to refer to the ORS website for more up-to-date information.

- **Enhancing Your Pension: Earning and Purchasing Service Credit.** For members who are interested in increasing their pension amount, or qualifying earlier, by adding to their service credit. The book includes details on the types of service credit available, how to apply, and different ways to pay.
- **Retirement Readiness: A Two-Year Countdown.** For plan members who are within a few years of retiring. This book contains specifics on how pensions are calculated, the various payment options, how to prepare for retirement, and the application process.
- **After You Retire: What Every Pension Recipient Should Know.** You will receive this booklet when you apply for your pension. It tells you what to expect, and how and when you should contact ORS after your retirement benefits begin.
- **If You Become Disabled: Your Disability Protection.** For members who are facing an illness or injury that prevents them from working. This brochure defines the criteria to receive a disability benefit and gives an overview of the application process.
- **Leaving Public School Employment?** For members who are terminating employment before retirement age. This brochure helps you choose what to do with your accumulated retirement benefits.

APPENDIX A: Retirement At A Glance

		FORMULA
Full Retirement - MIP	Age 46 with 10 years of service. Age 40 with 10 years of service. Age 40 are working with 5 years of service.	$FAC \times 1.5\% \times YOS$
Full Retirement - Basic	Age 60 with 10 years of service. Age 35 with 30 years of service.	$FAC \times 1.5\% \times YOS$
Early Reduced (MIP and Basic)	Age 55 and working with at least 15 years. Or less than 30 years of service.	Single life pension FAC x 1.25% for each month before age 60.
Early Disability	44 age or service requirements.	$FAC \times 1.5\% \times YOS$
Early Death		
Normal Disability (MIP and Basic)	30 years 10 years of credited service.	$FAC \times 1.5\% \times YOS$
Normal Death - MIP	If under age 60, 10 years of credited service. If at least age 60, 5 years of credited service.	$FAC \times 1.5\% \times YOS$
Normal Death - Basic	If under age 60, 15 years of credited service. If at least age 60, 10 years of credited service.	$FAC \times 1.5\% \times YOS$

APPENDIX B: MIP-Basic Plan Comparison

Until 1974, both employers and employees contributed to the pension fund. It was then a contributory plan. By 1977 the system was funded entirely through employer contributions—a noncontributory plan known as the Basic Plan.

In late 1986 the Member Investment Plan (MIP) was introduced. This contributory plan provides more generous pension benefit options. Those who were Basic Plan members at the time could choose the MIP, which took effect January 1, 1987. Basic Plan members again had the opportunity to select the MIP in the fall of 1991.

Public school employees newly hired after January 1, 1990, are in the Member Investment Plan. The most notable differences between the two plans are found in the chart below.

	MIP	BASIC
Membership	Employees first hired on or after January 1, 1990. Employees who elected MIP during enrollment periods.	Employees who did not elect the MIP plan during the MIP enrollment periods.
Contributions	Yes	No
Eligibility	46 with 10 60 with 10 60 with 5 (with stipulations) 55 with 15 (with stipulations)	55 with 10 60 with 10 55 with 15 (with stipulations)
Normal death benefit eligibility	10 years if member under age 60 at time of death. 5 years if member 60 or older at time of death.	15 years if member under age 60 at time of death. 10 years if member 60 or older at time of death.
Plan period	16 months	60 months
Cost of actuarial based service credit	Actuarial Cost Table	Actuarial Cost Table less 4%
Vesting	10 years 5 years if retiring under the 60 with 5 provision.	10 years

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AT YOUR SERVICE



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Within Lansing (517) 322-3103



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Main Office - Lansing
8:30 - 5:00 Walk-ins welcome
Corner of Harris Drive and Hicks Road
7150 Harris Dr. Dimondale MI 48821



Outreach Office - Detroit
Phone (313) 456-4010 for appt.
Cadillac Place, Suite 4-708
3068 W. Grand Blvd., Detroit MI

From I-96, take Exit 98 A-South Lansing Road. Turn north on Canal Road. ORS is in the 3-story brick building bordered by Canal Road, Hicks Road, Harris Drive, and Billwood Highway.

From I-75, take Exit 54-Chrysler Ave/E Grand Blvd. Head west on East Grand Blvd. for about 3/4 mile to Cadillac Place.

From I-94, take northbound US-10 (Lodge Freeway) to W Grand Blvd. exit. Proceed east 3 blocks on West Grand Blvd. to Cadillac Place.

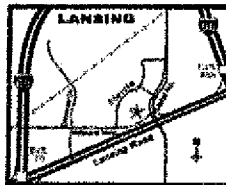


EXHIBIT 4



Your Retirement Plan

A Member Handbook
Public

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About the Office of Retirement Services

The Office of Retirement Services (ORS) is a division of the State of Michigan's Department of Management and Budget. ORS administers retirement programs for more than half million Michigan state and public school employees, judges, and state police.

About This Publication

The intent of this publication is to summarize basic plan provisions under Michigan's Public Act 300 of 1980, as amended. Current laws, rates, and factors are subject to change. Should there be discrepancies between this publication and the actual law, the provisions of the law govern.

This publication can be made available in alternative formats to meet the needs of our customers with visual or physical limitations. Please contact ORS if you require this service.

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Your Retirement Plan

A Member Handbook

for members of the
Michigan Public School Employees Retirement System



Office of Retirement Services
Department of Management and Budget
State of Michigan

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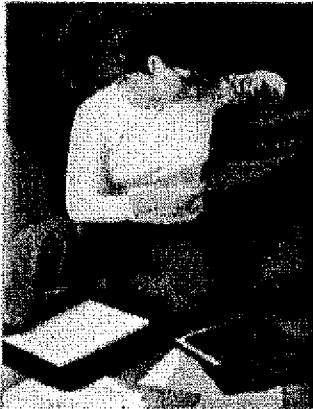
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I. About This Publication

Because it is so essential to plan for your retirement early in life, this handbook aims to give you enough general information about your pension so that—between your pension, social security, and personal savings—your retirement is all you hope it will be.



Besides some general history about the system and its administration, this book explains how and when you will qualify for a pension and how your pension will be calculated. It includes guidelines on how to enhance your retirement by purchasing service credit. You'll also find information you'll need if you leave public school employment, as well as an overview of the plan's disability protection, insurance, and survivor benefits.

Take charge of your retirement! Your pension is one of your most valuable assets—it is important that you monitor its value throughout your career so you can plan for additional sources of income in retirement.

Manage your plan with miAccount, our online account access tool where you can track your contributions and service credit totals, designate a beneficiary, estimate your pension, and more. Go to www.michigan.gov/orsmiaccount today to register and access your account. Return regularly throughout your career to ensure your secure financial future.



II. Plan Membership

The Basic Plan and the Member Investment Plan

Until 1974, both employers and employees contributed to the pension fund. It was then a contributory plan. By 1977, the system was funded entirely through employer contributions—a noncontributory plan known as the Basic Plan.

The Member Investment Plan (MIP) was introduced in late 1986. This contributory plan provides more generous pension benefit options. Those who were Basic Plan members at the time could choose the MIP, which took effect January 1, 1987. Basic Plan members again had the opportunity to select the MIP in the fall of 1991.

The majority of our members today are in the MIP. For the most part, this publication describes that plan, not the Basic Plan. The exceptions, mostly related to contribution rates and pension calculations, are noted. You can compare the key differences between the two plans by referring to Appendix B: MIP–Basic Plan Comparison.

Who Is a Member?

You become a member and begin accruing credit toward a pension on the first day you work in a participating Michigan educational institution. Members include employees of:

- K-12 public school districts.
- Intermediate school districts.
- District libraries.
- Publicly chartered schools.
- Tax-supported community colleges.

In some instances, membership includes certain employees who began working for Central, Eastern, Northern, and Western Michigan Universities, Ferris State and Lake Superior State Universities, and Michigan Technological University, before January 1, 1996.

Note: The terms *members* and *schools* throughout this handbook are referring to employees and employers who participate in the Public School Employees Retirement System.

You may be active, deferred, or retired.

Participants in the retirement system are classified in one of the following categories:

- **Active Member.** You are on the payroll of one of the participating Michigan educational institutions described earlier in this section. You remain an active member for up to one year while laid off, or as long as an employee-employer relationship exists while on a leave of absence. If you work as a substitute employee, you are only considered an active member on the actual days you are working.
- **Deferred Member.** You leave public school employment after you are vested but before you're old enough to draw your pension. You are vested for your pension—meaning you have sufficient service to qualify for a benefit but don't yet meet the age requirement—when you have the equivalent of 10 years of full-time employment. You remain in deferred status, as long as your contributions remain on account, until you apply for your pension at age 60 and become a retiree.
- **Retiree.** You are receiving a pension (disability or retirement) from the retirement system.

Membership exclusions.

The following employees are not members of the Public School Employees Retirement System:

- A person who retired from the system and is receiving a pension (even if he or she returns to public school employment).
- A person employed by a public school while enrolled as a full-time student in that system.
- A person under age 19 employed in a temporary, intermittent, or irregular seasonal or athletic position, whether a student or not.
- An instructor or administrator of a community college or eligible university who elected an optional retirement plan (such as TIAA/CREF) offered under Public Act 156 of 1967, as amended.
- An employee of a library or museum hired after it separated from the school district.

- A person working in the public school system only through a program resulting from the Federal Work Force Investment Act of 1998; Michigan Community Service Corps (Public Act 259 of 1983); Senior Community Service Employment Program (Public Law 89-73); or Work First Program.

Note: Administrators of these programs, who were previously members of the retirement system and remain employed by the school, may retain membership in the retirement system.

- An employee enrolled in a transitional public employment program.
- A person enrolled in a federally-funded neighborhood youth corps program or similar training program operated by an intermediate school district to prevent or rehabilitate high school dropouts.
- A person working for a school for the sole purpose of a political election.
- A person working in a public school who is contracted by an outside company, rather than hired directly by the school.
- A person working in a public school who is self-employed as an independent contractor.

Administration of the Plan

The operation of the Public School Employees Retirement System is controlled by the Michigan Public School Employees Retirement Act (Public Act 300 of 1980), as amended. Any changes to the act require passage by the Michigan Legislature.

The plan is administered by the Office of Retirement Services (ORS) with the oversight of a 12-member board. One board member represents state government; the remaining members are appointed by the governor to represent active and retired public school employees.

Throughout your working career, your employer takes care of your pension plan deductions, wage and service records, and plan contributions. Regular reports are sent to ORS to become part of your personal pension record. When it's time to retire, your employer hands off all your final records to ORS, and we become your partner in retirement.

III. Contributing to the Plan

The retirement system is funded by contributions of public school employers and employees, and by the investment earnings on these contributions. All contributions are a funding source for pensions and do not result in individual benefits in addition to the pension.

Who Contributes What

Employer contributions.

Each year, an actuary determines how much public schools need to contribute to fund their portion of member benefits. These contributions are not refundable to you or your employer.

Your contributions.

As a MIP participant, you contribute a percentage of your salary to the pension reserve fund. Your contribution rate depends on when you first began working for a Michigan public school reporting unit.

- If you elected the MIP before January 1, 1990, OR were a Basic Plan participant who enrolled in the MIP by January 1, 1993, you contribute 3.9 percent of your pretax salary.
- If you began Michigan public school employment between January 1, 1990, and June 30, 2008, OR are a returning member who did not work between January 1, 1987, and December 31, 1989, you contribute pretax contributions based on the following chart:

\$0 to \$5,000	3% of compensation (up to \$150 total)
\$5,000.01 to \$15,000	\$150, plus 3.6% of compensation from \$5,000.01 up to and including \$15,000 (up to \$510 total)
\$15,000.01 and over	\$510, plus 4.3% of compensation over \$15,000

- If you first became a member of the system on or after July 1, 2008, you contribute pretax contributions based on the following chart:

\$0 to \$5,000	3% of compensation (up to \$150 total)
\$5,000.01 to \$15,000	\$150, plus 3.6% of compensation from \$5,000.01 up to and including \$15,000 (up to \$510 total)
\$15,000.01 and over	\$510, plus 6.4% of compensation over \$15,000

In addition to your MIP contributions, you might have other personal contributions on account (from earnings before July 1, 1977, or from purchased service credit).

Your Personal Contributions

Though all member and employer contributions go into the reserve fund to pay all monthly pensions, we keep a separate account of your personal contributions. We do this for the following reasons:

- **Taxability.** Contributions you make on a tax-deferred basis will become taxable when you receive payments. We need to tell the IRS how much of your pension is taxable at retirement, and how much you've already paid taxes on.
- **Interest.** Personal contributions earn interest, and different rates apply depending on the type and time of the contribution. Ordinarily, this will only be important if you terminate employment and take a refund of contributions.
- **Refunds.** If you leave the retirement system before you're eligible for a pension, you can ask for a refund of your personal contributions, forfeiting all your rights to a monthly pension. See our publication *Leaving Public School Employment* for more details.
- **Survivor Payments.** If you die while an active member, your contributions can be paid to your designated beneficiary or your estate. See Section VI-Additional Benefits for You and Your Dependents for more information.

You earn interest on personal contributions.

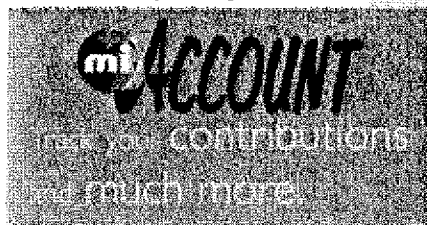
As your employer forwards your MIP contributions to ORS, we credit your account. At the close of each school fiscal year, we also credit you with interest on MIP contributions that have been on account for a full year. The interest rate on MIP contributions varies because it is statutorily determined each year based on the rate of investment return.

Personal contributions fund your pension plan, but you cannot borrow on or take a lump sum unless you leave the system and forfeit your pension rights.

If you purchased service credit or have post-tax contributions from years when the plan was contributory, we will keep track of those personal contributions separately. These funds earn 6 percent interest after they are on account for a full year. As with MIP accounts, interest is posted at the end of each school fiscal year.

Monitor Your Account

A detailed and up-to-date record of your account is available through your secure online account management tool, miAccount. When you log into miAccount, you will have access to service credit and contribution totals, beneficiary information, pension estimates, and much more. miAccount allows you to monitor your account throughout the year and perform a number of transactions.



For more information on what miAccount has to offer, see Section VII—Reaching Your Retirement Goals.

Annual Member Statements.

Each year we send active (working) members a *Member Statement*. While the primary purpose of the statement is to help you plan for your retirement, it also gives you an update on your account balance and account activity through June 30, the end of the school fiscal year.



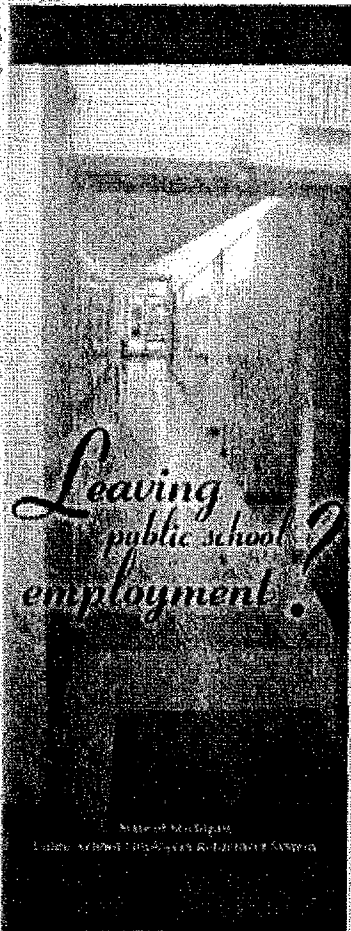
Along with your statement you will find our active member newsletter, *PROactive*. This newsletter provides additional support toward planning and reaching a secure financial future. You can find current and previous issues on our website, www.michigan.gov/ORSschools.

Review your annual statement carefully for accuracy. If you think there are errors in your wages, contributions, service credit, or tax-deferred payments (TDP), talk with your school payroll officer. ORS can assist with any cumulative totals and interest questions.

We also suggest that you keep your statements in a safe place so you have a point of comparison when next year's statement arrives.

If You Leave Public School Employment

If you leave public school employment before you're old enough to draw your pension, you have options regarding your retirement account.



If you are vested, make sure you designate your pension beneficiary with our office before you terminate your membership in the system. If you do not have a beneficiary on file with our office when you leave employment, you will not be able to add a beneficiary while you are deferred.

Read our publication *Leaving Public School Employment?* before you terminate so you have information you need to make the best decisions. You can find it on our website, or by asking us or your human resource office for a copy.

IV. The Basics of Your Plan

When you become a vested member of the Public School Employees Retirement System, you can look forward to a monthly retirement pension benefit for your lifetime. This section explains the fundamentals—how you accumulate service credit, when you'll be eligible, and how much you'll get.

How You Earn Service Credit

Every day you get up and go to work, you earn service credit. And every time you get paid, your school payroll office reports your hours and wages to ORS. Your service credit reflects the number of hours you worked for a Michigan school that participates in the Public School Employees Retirement System.

You receive credit for teaching or nonteaching, full-time or part-time work, and for permanent, temporary, intermittent, or substitute employment (unless you are working for a contractual agency). You also receive credit for used vacation and sick leave, short-term disability payments which flow through your school's payroll system, and weekly workers' compensation payments you received after July 1, 1992. You do not earn credit while receiving long-term disability payments.

Per pay period caps apply.

In general, you earn one year of service when you work 1,020 hours within the July 1 through June 30 school fiscal year. You can earn no more than one year of service credit in any given school fiscal year, and no more than 30 hours can be credited in a one-week period.

For instance, administrative staff may work 2,080 hours a year, but will be limited to one year of service credit because the annual cap is 1,020 hours.



As the chart below illustrates, if you are paid every week you cannot be credited with more than 30 hours, worth 0.0294 service credit. The cap is 60 hours or 0.0588 if you are on a biweekly pay cycle.

Pay Cycle	Hours	Service Credit
Weekly	30	0.0294
Biweekly	60	0.0588
Semimonthly	72	0.0706
Monthly	138	0.1353
Quarterly	396	0.3882
Annually	1,020	1.000

If you work less than full-time.

If you don't work a full school year or if you're considered part-time because you don't work a typical school day, you will earn proportional credit. See the chart below to see how service credit is earned for a variety of school work schedules, after considering the caps.

Days per Week	Days per Month	Hours per Year	Service Credit
17	6	102	0.1
34	6	204	0.2
68	6	408	0.4
85	6	510	0.5
119	6	714	0.7
51	4	204	0.2
102	4	408	0.4
153	4	612	0.6
260	4	1,020	1.0

Service credit and your pension.

Service credit is important because it affects when you retire and how much you'll receive. Your pension plan allows you to buy and/or transfer certain types of service credit. Learn more in Section V—Adding to Your Service Credit.

Qualifying for Your Pension

To be eligible for a monthly retirement pension, you must meet minimum age and service requirements. For more detailed information about pension eligibility provisions, visit the ORS website or ask for a copy of *Retirement Readiness: A Two-Year Countdown*.

Full Retirement – MIP Member.

As a MIP member, you will qualify for full retirement under any of the following provisions:

- **MIP 46 with 30.** You qualify for full retirement at any age with at least 30 years of service. However, if you purchased universal buy-in service credit, you must be at least age 46. At least 15 years of service credit must have been earned through the Michigan Public School Employees Retirement System.
- **MIP 60 with 10.** You are eligible for your pension at age 60 with at least 10 years of service credit.
- **MIP 60 with 5.** If you are age 60 and you have at least 5 years of service credit, you qualify for a pension if you have creditable service earned in each of the five school fiscal years immediately before your retirement effective date and you terminated your public school service immediately before your retirement effective date.

Full Retirement – Basic Member.

As a Basic Plan member, you qualify for a full retirement under the following retirement provisions:

- **Basic 55 with 30.** You qualify for your pension when you are at least age 55 and have 30 or more years of service credit. At least 15 years of service credit must have been earned through the Michigan Public School Employees Retirement System.
- **Basic 60 with 10.** You qualify for a pension at age 60 with at least 10 years of service credit.

A school fiscal year runs from July 1 through June 30.

Early Reduced Retirement – MIP and Basic Members.

Whether you are a MIP or Basic Plan member, you can take an early reduced retirement as early as age 55 if you have at least 15 but less than 30 years of service. Your pension amount is permanently reduced by one-half of one percent for each month and fraction of a month you take your pension before age 60 (6 percent per year).

You must be an active member to be eligible for the early reduced retirement (deferred members don't qualify).

If you become disabled.

There are special eligibility and calculation provisions for those who become disabled while a public school employee. This is explained in Section VI-Additional Benefits for You and Your Dependents, and in the ORS publication *If You Become Disabled: Your Disability Protection*.

How Much Will You Get?

Your annual pension is based on a formula that multiplies your final average compensation times a pension factor of 1.5 percent times your years of service.

The Pension Formula

$$\text{FAC} \times 1.5\% \times \text{YOS}$$

Final Average Compensation Pension Factor Years Of Service

Dividing the annual pension by 12 will tell you how much your monthly pension will be if you elect the straight life option. You can also choose a survivor option or an equated plan for your pension payments.

It is important that you understand all of these concepts because they have a direct effect on your pension amount:

- **Final average compensation (FAC).** For MIP members, the highest three consecutive years of earnings (36 months) are averaged to determine your final average compensation, or FAC. If you are a Basic Plan member, your highest five consecutive years of earnings (60 months) are averaged to determine your FAC.

Unpublished Decision of the
Michigan Employment Relations Commission

26 MPER ¶ 22, 26 Michigan Pub. Employee Rep. ¶ 22, 2012 WL 4859082

Michigan Employment Relations Commission

Wayne County, Public Employer-Respondent, and Michigan AFSCME Council 25 and Its
Affiliated Locals 25, 101, 409, 1659, 1862, 2057, 2926, and 3317, Labor Organizations-Charging
Parties

No. C09 J-211

September 17, 2012

Appearances:

Barbara Johnson, for Respondent, before the Administrative Law Judge, Wayne County Labor
Relations Division

Deborah K. Blair-Krosnicki, Chief Labor Relations Analyst, for Respondent on Exceptions

Jamil Akhtar, for Charging Parties, Jamil Akhtar PC

Judge / Administrative Officer

CALLAGHAN
GREEN
LABRANT

Ruling

An MERC majority upheld an ALJ's recommended decision regarding an unfair practice charge. The ALJ decided that the county employer violated PERA Section 10(1)(e) by unilaterally altering its longtime past practice of providing health care benefits to retirees on duty or nonduty pensions who met age and service requirements. The MERC majority upheld the ALJ's conclusion that the parties maintained a binding past practice regarding disability pensions and that this practice became a term and condition of employment. While the MERC majority disagreed with the ALJ's suggestion that charging parties should be awarded legal fees, it upheld the remainder of the unfair practice remedies issued by the ALJ, which included make-whole and bargaining orders.

County's alteration of past practice equals ULP but doesn't warrant attorney's fees

Meaning

Under judicial and MERC precedent, a past practice that contradicts terms of a bargaining agreement provision may rise to the level of an agreement to modify the parties' contract. Here, the parties undisputedly amended their bargaining agreements through 30 years of a past practice regarding health benefits for retirees on duty or nondisability pensions. An MERC majority rejected the employer's contention that this past practice was superseded by new bargaining agreements that incorporated a new health and welfare benefit plan.

Case Summary

For many years, the bargaining agreements between the county employer and charging parties provided for pensions and health care benefits for retirees. For over 30 years, the employer provided health care benefits to retirees receiving a duty disability pension without regard to age or years of service. It also provided those benefits to retirees receiving a disability pension with 10 years of credited service. However, since 2000, the parties' bargaining agreements limited health care benefits for retirees who met certain age and service requirements. In addition, 2000-2004 agreements expressly adopted the 1990 version of the county's Health and Welfare benefits plan. Since 2008, at least four bargaining unit members retired on disability pensions, and the county employer provided them with medical benefits. When the employer discussed the possibility of eliminating medical benefits for employees who were granted disability pensions, charging parties filed an unfair practice charge. They contended that the employer violated PERA Section 10(1)(e) by unilaterally altering its longtime past practice of providing health care benefits to retirees on disability pensions who met age and service requirements. An MERC majority upheld the ALJ's conclusion that the parties maintained a binding past practice regarding disability pensions and that this practice became a term and condition of employment. The employer's incorporation of the Health and Welfare Benefit Plan - which was amended in 2006 - in the 2008 bargaining agreement did not give the employer the right to end the past practice in question, the MERC majority found. It determined that the employer breached its duty to bargain in good faith by failing to give charging parties notice and an opportunity to bargain over the personnel order ending the parties' lengthy past practice. While the MERC majority disagreed with the ALJ's suggestion that charging parties should be awarded legal fees, it upheld the remainder of the unfair practice remedies issued by the ALJ, who issued a cease and desist and make-whole orders. The ALJ also directed the employer, upon request, to bargain with charging parties, and to restore terms and conditions of employment with respect to health benefits for certain retired bargaining unit members.

The MERC majority reasoned that, in light of the past practice related to health care benefits specifically for disability retirees, the parties' contract must include language specifically addressing that past practice in order to end it. The MERC majority also rejected the employer's allegation that the ALJ was biased against it.

The concurring MERC member joined with the MERC chair in adopting the ALJ's decision regarding the charge itself. The concurring MERC member contended that MERC did not lack

authority to award attorney fees in an appropriate case. The third MERC member dissented in part, contending that the employer did not violate its good faith bargaining duty by exercising contractual authority to withhold health care benefits from retirees receiving disability pensions who did not meet contractual requirements for receipt of those benefits.

Full Text

Decision and Order

On September 23, 2011, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order in the above matter, finding that Respondent, Wayne County (Employer), violated § 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by eliminating the practice of providing health care benefits to employees who retire on duty or nonduty disability pensions, without first bargaining over the subject with Charging Parties, Michigan AFSCME Council 25 and its affiliated Locals 25, 101, 409, 1659, 1862, 2057, 2926, and 3317 (referred to collectively as Unions). Noting that retirement and health care benefits are mandatory subjects of bargaining, the ALJ reasoned that Respondent's more than thirty year practice of allowing employees who retire on disability pensions before reaching the prescribed age and service requirements to collect health care benefits constituted a binding past practice that could not be altered without bargaining. The ALJ stated that if he had the authority to do so, he would recommend that Respondent be required to pay attorney fees and costs because he found the circumstances of Respondent's violation to be "particularly egregious" and because the Commission has found that Respondent violated § 10(1)(e) in several different cases in the past few years. The ALJ recommended that we order Respondent to cease and desist from making unilateral changes in terms and conditions of employment and to provide affirmative relief to the employees harmed by Respondent's unlawful acts. The ALJ's Decision and Recommended Order was served on the interested parties in accordance with § 16 of PERA. After requesting and receiving an extension of time, Respondent filed exceptions on November 16, 2011. Charging Party did not file a response to the exceptions.

In its exceptions, Respondent asserts that the ALJ erred in concluding that Respondent made an unlawful unilateral change to terms and conditions of employment when it decided to end the past practice of allowing employees who retired on disability pensions to collect health care benefits, regardless of age or years of service. Respondent contends that the past practice of granting health care benefits to retirees receiving a duty or nonduty disability pension was superseded by the parties' 2008 collective bargaining agreements that incorporate the 2006 Wayne County Health and Welfare Benefit Plan, which contains language that specifically reserves to Respondent the authority to make the "full and final determination as to all issues concerning eligibility for benefits." Respondent also argues that the ALJ erred by considering past MERC cases, in which Respondent was found liable for unfair labor practices. Respondent accuses the ALJ of inferring that Respondent has committed unfair labor practices in this case because it committed unfair labor practices in the past and argues that the ALJ's use of past cases in his analysis shows the ALJ's bias against Respondent. Further, Respondent asserts error in the portion of the ALJ's decision suggesting that this would be an appropriate case for an award of

costs and attorney fees to Charging Parties, if we had the authority to make such an award.

I have reviewed Respondent's exceptions and find them to be without merit.

Factual Summary:

I adopt the findings of fact as set forth in the ALJ's Decision and Recommended Order and will not repeat them here, except as necessary. For many years, the collective bargaining agreements between Charging Parties and Respondent have included provisions for pensions and health care benefits for retirees. It is undisputed that, for over thirty years prior to the April 19, 2010 hearing in this matter, Respondent consistently provided health care benefits to retirees receiving a duty disability pension without regard to age or years of service and to retirees receiving a nonduty disability pension with ten years of credited service. Since at least 2000, the parties' collective bargaining agreements have limited health care benefits to retirees who meet certain age and service requirements. None of the parties' agreements covering the years 2000-2004 expressly address health care benefits for those who retire on the basis of disability.

The parties' subsequent agreements [FN1] have not substantially differed with respect to the treatment of health care benefits for employees who retired on disability pensions. In 2006, a revised Wayne County Health and Welfare Benefit Plan was issued. This Health and Welfare Benefit Plan was expressly adopted in the collective bargaining agreement between Respondent and Local 3317 covering the period from 2004 to 2008 [FN2] as well as in the agreement covering 2008 to 2011. The collective bargaining agreements covering the period from 2004 to 2008 between Respondent and Locals 25, 101, 409, and 1659, [FN3] and between Respondent and Locals 1862, 2057, and 2926, which were both executed in 2008, adopt the Health and Welfare Benefit Plan without mention of the date of the Plan. All three 2000 to 2004 collective bargaining agreements between Respondent and Charging Parties expressly adopt the 1990 version of the Health and Welfare Benefit Plan. Since 2008, when the most recent agreements between Respondent and Charging Parties became effective, at least four bargaining unit members retired on disability pensions and were provided with medical benefits.

It is undisputed that at the October 26, 2009 meeting of the Wayne County Employees Retirement Board of Directors, the County discussed with the Board the issue of eliminating medical benefits for employees who are granted a disability pension. On October 30, 2009, Charging Parties filed the charge in this matter. On December 4, 2009, Respondent moved for summary disposition contending that the change in medical benefit eligibility for duty and nonduty disability retirees, which Charging Parties alleged Respondent planned to implement on November 1, 2009, had not occurred. Respondent argued that because all employees who received a duty or nonduty disability pension remained eligible for medical benefits, there was no basis for Charging Parties' claim of repudiation.

On March 17, 2010, Respondent issued Administrative Personnel Order 1-2010, which provided that as of May 1, 2010, duty and nonduty disability retirees would only be eligible to receive "discretionary" health care benefits if they also met the age and service requirements for health care benefits with a service pension.

Discussion and Conclusions of Law:

The ALJ's Finding That Respondent Breached Its Duty to Bargain

Given Respondent's undisputed, consistent thirty year practice of not requiring retirees receiving a pension based on disability to meet age or years of service requirements for receipt of health insurance benefits, the ALJ concluded that the parties had tacitly agreed to amend the terms of the collective bargaining agreements to allow disability retirees to receive health care benefits without regard to their age or years of service. The ALJ found that the tacit agreement was sufficient to amend the contract in this case because the collective bargaining agreement did not specifically address the issue of health care benefits for persons retiring on the basis of disability. The ALJ also concluded that Respondent's more than thirty year practice of providing health care benefits to all former employees receiving pensions on the basis of disability was so widely acknowledged and mutually accepted that it became a term and condition of employment. Upon thorough review of the record in this matter, I agree with the ALJ's conclusions that a past practice was established, which became a term and condition of employment, for the reasons stated in the ALJ's Decision and Recommended Order.

It is undisputed that the benefits at issue here are mandatory subjects of bargaining. Thus, the parties are bound by their collective bargaining agreements unless their agreements are modified or supplemented. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 330 (1996) and *Detroit Police Officers Ass'n v Detroit*, 452 Mich 339 (1996) stand for the proposition that a past practice that contradicts terms of a collective bargaining agreement provision may rise to the level of an agreement to modify the contract. Here, Respondent does not dispute the fact that the parties had amended their collective bargaining agreements by more than thirty years of past practice. Indeed, Respondent concedes that the past practice bound the parties until the collective bargaining agreements executed in 2008. Respondent states on page 2 of its exceptions, "The old past practice granting the retiree healthcare insurance to those granted a duty or nonduty disability pension was obviously superseded by the new collective bargaining agreements (which incorporated a new health and welfare benefit plan)." Respondent appears to agree that there was a binding past practice, but contends that the past practice was superseded by the 2008 collective bargaining agreements.

In support of its assertion the past practice of granting health care benefits to retirees receiving a duty or nonduty disability pension was superseded by the parties' 2008 collective bargaining agreements, Respondent points to language in Section 2 of the 2006 Health and Welfare Benefit Plan, which specifically reserves to Respondent's Benefit Plan Administrator the authority to make the "full and final determination as to all issues concerning eligibility for benefits" and provides that the Benefit Plan Administrator shall "interpret the Benefit Plan and shall decide interpretation and application of the Benefit Plan." However, this same language is found in the final paragraph of the 1990 Health and Welfare Benefit Plan. It does not change the authority of the Benefit Plan Administrator and gives no support to Respondent's contention that incorporating the 2006 Health and Welfare Benefit Plan in the 2008 collective bargaining agreements gave Respondent the right to end the practice of providing health care benefits to retirees receiving pensions based on disability.

Moreover, there is no appreciable difference between the language of the 2000-2004 contracts and the contracts executed in 2008 with respect to the eligibility of disability pension recipients for health care benefits. Respondent has argued that the 2006 Health and Welfare Benefit Plan was incorporated by reference into the 2008 collective bargaining agreements, and that language in that plan makes the age and service requirements for health care benefits applicable to all retirees including those who retire on the basis of disability. However, neither the 2006 Health and Welfare Benefit Plan, nor any of the contracts executed in 2008 contain any express reference to health care benefits for retirees receiving disability pensions. Moreover, there is no relevant difference between the 1990 Health and Welfare Benefit Plan incorporated in the 2000-2004 contracts and the 2006 Plan with respect to the age and service requirements for healthcare benefits; like both sets of collective bargaining agreements, both plans generally tie eligibility for health care benefits to eligibility for a pension and make no mention of health care benefits for those who retire on the basis of disability. In light of the past practice related to health care benefits specifically for disability retirees, there must be language specifically addressing health care benefits for disability retirees to find that the contract language ended the past practice.

Although Respondent contends that the past practice of granting health care insurance to retirees receiving a duty or nonduty disability pension was superseded by the parties' 2008 collective bargaining agreements, Respondent acknowledges in its exceptions that it continued to adhere to its practice of granting health care benefits to disability retirees for a "few years (2008 to 2010)" after the new agreements were in place. If the new contracts ended the past practice, it should have been clear to all parties at the time the new contracts were executed that the practice of granting health care benefits to disability retirees had come to an end. However, there is no evidence in the record indicating that Charging Parties were aware, at the time the 2008 contracts were executed, that retirees receiving disability pensions would no longer be eligible for health care benefits unless they met the age and years of service requirements for a standard pension.

Further, Respondent has failed to show that the parties bargained over the applicability of health care insurance age or service requirements for retirees receiving disability pensions when the parties negotiated the new contracts in 2008. Respondent offered no evidence that it informed Charging Parties that the 2008 contracts were intended to end the practice of providing health care benefits to disability pension retirees who did not meet the age and service requirements for a pension that is not based on disability. Additionally, Respondent has failed to show that Charging Party waived its right to bargain over the termination of the past practice. A waiver of bargaining rights must be explicit, clear, and unmistakable. See *Amalgamated Transit Union, v SEMTA*, 437 Mich 441, 460-461, (1991), finding, for there to be a waiver, there must be "evidence that the matter in issue was 'fully discussed and consciously explored during negotiations and the union must have consciously yielded or clearly and unmistakably waived its interest in the matter.'" [FN4] "Here, there is no evidence that Charging Parties were aware that the termination of the past practice was an issue during the bargaining for the contracts executed in 2008. Respondent had a duty to give notice and an opportunity to bargain over the termination of the past practice, before it terminated the practice. See e.g. *Capital Area Transportation Authority*, 1994 MERC Lab Op 921. Instead, Respondent presented the termination of the past practice to Charging Parties as a fait accompli when it issued Administrative Personnel Order

1-2010. By doing so, Respondent breached its duty to bargain.

I further agree with the ALJ that Respondent's reliance on *Butler v Wayne Co*, 289 Mich App 664 (2010) is misplaced. In *Butler*, retirees filed a class-action suit alleging that the Employer unlawfully changed the method for calculation of supplemental life insurance premiums from a flat rate structure to an age rated system. The Court of Appeals concluded that the express terms of the Wayne County Health and Welfare Benefit Plan, which had been incorporated into the parties' contract, specifically authorized the Employer to change to an age rated premium system. Here, there is no specific language in either the contract or in the Wayne County Health and Welfare Benefit Plan that authorizes Respondent to cease its past practice of granting healthcare benefits to retirees receiving disability pensions without regard to whether those retirees meet the age or service requirements for general retirees to receive healthcare benefits.

For the foregoing reasons, I find no error in the ALJ's conclusion that Respondent breached its duty to bargain under § 10(1)(e) of PERA when it unilaterally decided to end the practice of providing health care benefits for retirees receiving disability pensions.

Respondent's Allegation That the ALJ Is Biased

On the final page of the ALJ's Decision and Recommended Order, the ALJ states:

The County's decision to eliminate the practice of granting health care benefits to disabled retirees just three months after its attorney and its benefits director acknowledged the existence of the past practice was particularly egregious.

In that same paragraph, the ALJ proceeds to discuss four decisions issued in the past three years in which Respondent was found to have committed unfair labor practices. In three of those cases, Respondent was found to have committed unfair labor practices against Charging Party AFSCME Council 25: Wayne Co, 24 MPER 12 (2011); Wayne Co, 24 MPER 25 (2011) and Wayne Co, 22 MPER 80 (2009) (no exceptions). The fourth case, Wayne Co, 22 MPER 65 (2009) (no exceptions), involved a charge brought by Wayne Co. Sheriffs Local 502. The ALJ cites those past cases as part of the justification for his conclusion that Respondent should be assessed costs and attorney fees.

Respondent accuses the ALJ of inferring that Respondent has committed unfair labor practices in this case because it committed unfair labor practices in the past. Respondent argues that the ALJ's use of past cases in his analysis shows the ALJ's bias against Respondent. I disagree. It is clear from the ALJ's Decision and Recommended Order that he cites the four recent cases in which Respondent was found to have committed unfair labor practices only in support of his opinion that we should assess costs and attorney fees for what he finds to be Respondent's "egregious" behavior. The ALJ's conclusion that Respondent committed an unfair labor practice in this case is fully supported by the facts in the record and the law. Each case before this Commission must be decided on its own facts and the applicable law. This Commission cannot and will not issue an order finding a respondent liable for an unfair labor practice in one case merely because it committed a different unfair labor practice in an earlier separately adjudicated case. The ALJ's

finding that Respondent unlawfully made a unilateral change to terms and conditions of employment without first giving Charging Party notice and an opportunity to bargain is fully supported by the facts of this case and is affirmed

The ALJ's Suggestion That Costs and Attorney Fees Should Be Awarded to Charging Parties

Respondent also asserts error in the ALJ's suggestion that this would be an appropriate case for an award of costs and attorney fees to Charging Parties. The ALJ's suggestion was apparently made in response to Charging Parties' request for attorney fees and costs in its post-hearing brief. Noting that the Commission has declined to award attorney fees since the issuance of the Court of Appeals decision in *Goolsby v Detroit*, 211 Mich App 214 (1995), Charging Parties urged reconsideration of the Commission's authority to grant attorney fees. In support of its contention that the Commission has authority to award costs and attorney fees, Charging Parties point to United States Court of Appeals decisions reviewing National Labor Relations Board (NLRB or Board) decisions finding that the NLRB has such authority. Charging Parties cite *Johnson and Hardin Co v NLRB*, 49 F3d 237 (CA 6, 1995) and *BE & K Const Co v NLRB* 246 F3d 619 (CA 6, 2001) in support of its contention that the Board has the authority to grant attorney fees and, therefore, the Commission does as well. Both cases cited by Charging Parties are inapposite as they involve the award of attorney fees for litigation expenses caused by the respondents' unfair labor practice of filing a retaliatory baseless lawsuit. The issue in both cases was whether the lawsuit filed by the respondent was both baseless and retaliatory such that the filing was an unfair labor practice for which the Board could order costs and attorney fees related to the charging party's defense of the frivolous retaliatory suit. Both cases were based on the decision in *Bill Johnson's Restaurants, Inc v NLRB*, 461 US 731; 103 SCt 2161 (1983), which held that the Board could enjoin, as an unfair labor practice, a baseless lawsuit filed for retaliatory purposes. Relying on *Bill Johnson's Restaurants, Inc*, the Board awarded attorney fees as damages in *BE & K Const Co*. [FN5]

However, the issue here is not whether attorney fees can be awarded as damages arising out of the unfair labor practice, but whether costs and attorney fees can be awarded to the Charging Parties because, as Charging Parties assert in their post-hearing brief, Respondent has committed "flagrant and continuing violations of PERA." Our authority to award remedies stems from § 16(b) of PERA which states in relevant part:

If upon the preponderance of the testimony taken the commission is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. (Emphasis added.)

Section 16(b) does not specifically authorize the award of attorney fees or litigation costs. As the Court of Appeals pointed out in *Goolsby*, at 224, under the American Rule "attorney fees are not recoverable unless authorized by statute, court rule, or a recognized common-law exception."

Although reference is often made to the language "take such affirmative action . . . as will effectuate the policies of this act" to justify the extraordinary relief of attorney fees and costs, I agree with the Goolsby court that the language in § 16(b) is not sufficiently specific to authorize an award of attorney fees. The legislature specified our authority to require the reinstatement of employees, with or without back pay, and to require persons to make reports showing compliance with our orders. In light of the American Rule, if the legislature had intended to authorize us to award attorney fees, they would have specified that in § 16(b) as well.

In conclusion, although this Commission disagrees with the ALJ's suggestion that this is an appropriate case for the awarding of attorney fees, Commissioner Green and I affirm the ALJ's decision on the issue of Respondent's breach of its duty to bargain and adopt the ALJ's order.

Order

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

Commissioner Green, Concurring Separately:

I concur with the result reached in this matter because I agree with Commission Chair Callaghan that Respondent breached its duty to bargain for the reasons stated in Commissioner Callaghan's opinion. I join in adopting the ALJ's order. I also agree that this is not an appropriate case in which to award attorney fees and costs.

I agree with Commissioner Callaghan that the cases cited by Charging Parties in support of their request for attorney fees are not applicable to the issue before us. As Commissioner Callaghan stated, "the issue here is not whether attorney fees can be awarded as damages arising out of the unfair labor practice." The issue with respect to attorney fees is not only whether they can be awarded pursuant to the authority granted to the Commission in § 16(b) of PERA, but also whether they can be granted under an exception to the American Rule or pursuant to the inherent authority of an administrative agency to control proceedings [FN6] and to regulate professionals who appear before it [FN7]. However, I agree that none of the theories used in the past by this Commission or by the National Labor Relations Board (NLRB) in support of attorney fee awards apply to this case. In particular, given the dissent on the issue of whether Respondent breached its duty to bargain, there is no basis for finding that Respondent put forth a frivolous defense. However, I note that the NLRB continues to assess attorney fees [FN8] and we are often guided by NLRB precedent. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 260; 215 NW2d 672 (1974). Therefore, unlike my fellow commissioners, I am unwilling to conclude that we lack the authority to award attorney fees in an appropriate case.

Commissioner Labrant, Dissenting in Part, Concurring in Part:

I agree with my colleagues that this is not an appropriate case for an award of attorney fees. I reach that conclusion because I find that Respondent has not violated its duty to bargain in good faith under § 10(1)(e) and the charge should be dismissed. I also agree with Commission Chair

Callaghan that this Commission lacks the authority to award attorney fees under the language of § 16(b) of PERA as interpreted by the Court of Appeals in *Goolsby v Detroit*, 211 Mich App 214 (1995).

The ALJ found that for over thirty years Respondent gave "tacit approval" to the past practice of providing duty and nonduty disability retirees with lifetime health care benefits. He found that to change that past practice constituted an unfair labor practice. I disagree. In Wayne County, under the terms of the 2006 Health and Welfare Benefit Plan, County employees participate in one of the available retirement plans, one through six, including duty or nonduty disability retirees. The 2006 Health and Welfare Benefit Plan was incorporated into the collective bargaining agreements executed by Respondent and Charging Parties in 2008. Respondent was acting within its authority under the collective bargaining agreements to withhold health care benefits from retirees receiving disability pensions who do not meet the contracts' requirements for receipt of those benefits. It is not an unfair labor practice for Respondent to enforce the terms of the contract.

A finding that a contract has been amended based on past practice arising from the parties' tacit approval is only appropriate if the contract is silent on the issue or ambiguous. *Port Huron Ed Assn v Port Huron Area Sch Dist*, 452 Mich 309, 325 (1996). When, a contract provision is clear and unambiguous, as in this case, a higher standard of proof is necessary. *Id* at 325-326. The party seeking to establish that the past practice modified the contract must show that there has been a meeting of the minds in which both parties agree to the contract modification. *Id* at 326-327. Indeed, as the Court pointed out in *Port Huron* at 330.

[We] should be wary of raising the parties' past actions to the same status as the written provisions in the agreement. . . The agreement embodies mutual assent and, during the duration of the contract, either party should be able to rely on the provisions previously bargained for during negotiation of the agreement. Allowing the agreement to be superseded by anything less than a purposeful decision evidencing similar deliberation would "create the anomaly that, while the parties expend great energy and time in negotiating the details of the agreement, they unknowingly and unintentionally commit themselves to unstated and perhaps more important matters which in the future may be found to have been past practice." [FN9]

Here, there must be a showing that Respondent intentionally relinquished its right to limit health care benefits to retirees who meet the age and service requirements. A careful review of the facts in this case establishes that Charging Parties and Respondent bargained over health care benefits and retirees' eligibility for such benefits. The parties entered into agreements setting certain age and service requirements for retirees to be eligible for health care benefits. There is no showing that Respondent intended to reject the terms of those agreements. In negotiating their contracts in 2008, the parties incorporated the 2006 Health and Welfare Benefit Plan, which clearly linked eligibility for health care benefits with meeting the age and service requirements to be eligible for standard pension. Similar language included in the contracts explained that retirees were only eligible for health care benefits if they met the age and service requirements for a standard pension. This language made it clear that despite its past leniency in granting health care benefits to disability retirees, Respondent had the right to insist that all retirees, including those who

retired on the basis of disability, meet the age and service requirements to be eligible for health care benefits.

Although Respondent may have allowed disability retirees to receive health care benefits without regard to age and years of service for over thirty years, there is insufficient evidence in the record to establish that Respondent intended to waive its right to enforce the express contract provisions. See Southfield Pub Sch, 2002 MERC Lab Op 53, where this Commission found that the employer's sixteen year practice of routinely granting all requests for unpaid leaves of absence did not amend the parties' contract because the practice conflicted with contract language that gave the employer the discretion to grant or deny requests for such leaves. In the absence of evidence that there was a meeting of the minds that led to a mutually accepted modification of the contract, I cannot find that Respondent waived its right to require disability retirees to meet the same age and years of service requirements applied to all other retirees to establish eligibility for health care benefits. As in Southfield Pub Schs, Respondent exercised its discretion to extend leniency in granting a benefit, but did not waive its right to enforce the plain language of the contract.

Finally, Respondent's 2000-2004, 2004-2008, and 2008-2011 collective bargaining agreements with AFSCME Local 3317 each contain Section 43.09, which expressly rejects the possibility of past practices affecting the contract:

This agreement contains the entire understanding and agreement of the parties. It is further agreed that there are no verbal agreements or understandings or past practices that affect or qualify any term of this agreement."

The language of the contract should be given its plain meaning. The contract sets age and years of service prerequisites for receiving post-retirement health care benefits. Those requirements apply to all retirees, including those whose retirement resulted from disability. Pursuant to the above zipper clause, no past practices apply. See Justice Markman's dissent in City of Kentwood v Police Officers Labor Council, 483 Mich 1116, 1118, (2009).

For the foregoing reasons, I would find that the ALJ was incorrect in holding that past practice prevails over the plain language of the contract. I would reverse the ALJ's decision and dismiss the charge.

Decision and Recommended Order of Administrative Law Judge

On October 30, 2009, Michigan AFSCME Council 25 and its affiliated Locals 25, 101, 409, 1659, 1862, 2057, 2926 and 3309 filed an unfair labor practice charge alleging that Wayne County violated Section 10(1)(e) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210(1)(e), by unilaterally eliminating the practice of providing health care benefits to employees who retire on a duty or non-duty disability pension. Pursuant to Sections 10 and 16 of PERA, this case was assigned to David M. Peltz, Administrative Law Judge of the Michigan Administrative Hearing System, on behalf of the Michigan Employment Relations Commission. Based upon the entire record, including the transcript of hearing, exhibits

and post-hearing briefs filed by the parties, I make the following findings of fact, conclusions of law and recommended order.

Findings of Fact:

All of the Charging Party labor organizations represent bargaining units of employees of Wayne County. AFSCME Locals 25, 101, 409 and 1659 are the certified bargaining agents for a broad unit of non-supervisory civilian employees of the County. AFSCME Locals 1862, 2057 and 2926 represent a bargaining unit comprised of the County's civilian supervisory employees. AFSCME Local 3317 is the exclusive bargaining representative of supervisory law enforcement personnel employed by Respondent, including sergeants and lieutenants.

The collective bargaining agreements entered into between Charging Parties and the County all contain language governing retirement and health insurance benefits for bargaining unit members. Since at least 2000, the contracts have included age and service requirements for employees to receive health care benefits upon retirement. For example, the 2000-2004 collective bargaining agreements covering the supervisory and non-supervisory civilian units provide generally that employees hired on or after December 1, 1990 "shall not be eligible for insurance or health care benefits upon retirement unless they retire with thirty (30) or more years of service." Those agreements contain an exception pursuant to which employees enrolled in specific retirement plans are eligible to retire with health and insurance benefits "provided he or she has fifteen (15) or more years of service and is age sixty (60)." The 2000-2004 collective bargaining agreement covering supervisory law enforcement personnel contain similar age and service requirements. None of the 2000-2004 agreements refer specifically to the subject of health care benefits for employees who retire on a disability pension.

The 2000-2004 contracts for each of the Charging Party locals incorporate by reference the Wayne County Health and Welfare Benefit Plan (hereafter "the Plan"). At the time the 2000-2004 contracts were in effect, the most recent version of the Plan was dated June 27, 1991. That document contained the following language with respect to retirement health benefits:

1. Employees in retirement Plans #1 and #3 shall be eligible for health care benefits if they have met all age and service requirements eligibility of their retirement plan.
2. Employees hired before December 1, 1990, shall be eligible for participation in defined retirement plan #2 or defined retirement contribution plan #4. Employees must meet all age and service requirements eligibility to be eligible for insurance and health care benefits.
3. All new employees hired on or after December 1, 1990 shall be eligible for participation in Defined Benefit Plan #2 or Defined Contribution Plan #4, however, said employees shall not be eligible for insurance and health care benefits upon retirement unless they retire with 30 or more years of service.

In July of 2008, AFSCME Locals 25, 101, 409 and 1659 and Respondent executed a new collective bargaining agreement covering the County's civilian non-supervisory employees for

the term December 1, 2004 to September 30, 2008. Like the predecessor agreement, the 2004-2008 contract contains age and service requirements for retirement health care benefits. However, the specific eligibility requirements for each of the various retirement plans offered by the County were modified. Article 30 of the 2004-2008 agreement provides, in pertinent part:

30.01 General Provisions

(C) Employees participating in a retirement plan offered by the County who were hired prior to the date of execution of this Agreement by the County Executive must meet the age and service requirements to be eligible for post-retirement insurance and healthcare benefits pursuant to the Wayne County Health and Welfare Benefit Plan.

* * *

(E) Unless otherwise specified, regardless of the Retirement Plan all employees hired on or after December 1, 1990 shall not be eligible for insurance and healthcare benefits upon retirement unless they retire with thirty (30) or more years of service; however, effective November 16, 2001, employees in Plan No. 2, Plan No. 3, Plan No. 4, and Plan No. 5 shall be eligible to retire with insurance and health care benefits provided he or she has fifteen (15) or more years of service and is age sixty (60) or older. Employees in the Hybrid Retirement Plan (Plan No. 5) hired on or after December 1, 1990 shall only be eligible for insurance and health care benefits upon retirement if they retire with thirty (30) or more years of service.

(F) Regardless of the Retirement Plan, all employees hired, rehired, re-employed and reinstated on or after the date of execution of this Agreement by the County Executive will not receive nor be eligible for Employer-sponsored insurance and health care benefits upon retirement. However, these employees will be eligible to participate in an Employee Health Care Benefit Trust in accordance with 30.10(A) and the terms and conditions outlined in the Wayne County Health and Welfare Benefit Plan. Employees participating in the Employee Health Care Benefit Trust who retire from County employment may elect to purchase post-retirement health care insurance from the County at full rate cost, or purchase such insurance from a provider other than that provided by the County. This subsection (30.01(F)) will not apply to terminated employees reinstated through arbitration who were otherwise eligible for post-retirement health care prior to termination.

The 2004-2008 contract covering Locals 25, 101, 409 and 1659 also contains requirements specific to each of the various retirement plans offered by the County. With respect to age and service requirements, these provisions use the phrase "normal" retirement in describing the terms and conditions of each plan. For example, Section 30.03 of the agreement, which sets forth the requirements of the Defined Benefit Plan No. 2, provides, "Normal retirement shall mean 25 years of credited service at age 55, 20 years of credited service at age 60, or eight (8) years of credited service at age 65. Effective November 16, 2001, normal retirement shall also include fifteen (15) years of credited service at age 60." Section 30.06 of the 2004-2008 contract, which describes the terms of the Hybrid Retirement Plan No. 5, contains the following language:

B. Defined Benefit Provisions

1. Normal retirement shall mean twenty five (25) years of credited service at age 55, twenty (20) years of credited service at age 60, or eight (8) years of credited service at age 65, or thirty (30) years of credited service without an age requirement. An employee in plan 5 hired prior to the date of execution of this Agreement by the County Executive who retires with thirty (30) years of service, or fifteen (15) years of credited service at 60, will receive medical benefits as otherwise provided under the terms of this Agreement. For employees hired prior to December 1, 1990, normal retirement shall include medical benefits as otherwise provided under this agreement.

* * *

5. Eligible employees shall receive a duty disability retirement benefit. The amount of retirement compensation shall be computed as normal retirement with additional service credit granted from the date of retirement to age sixty (60). The total Plan 5 Duty Disability Benefit including that received under section 30.06(C)((4) below shall not exceed seventy-five percent (75%) of the employee's final average compensation as otherwise provided for in Defined Benefit Plan No. 1.

Payment of Workers' Compensation Benefits will be used to reduce an employee's retirement compensation. No age or service requirements apply.

6. Employees shall be eligible for a non-duty disability retirement upon completion of ten (10) years of credited service. The amount of retirement compensation shall be computed as normal retirement, but based on the actual number of years of credited service and average final compensation at the time of termination. The Employer reserves the right to limit payments from the Retirement System through the use of proceeds from the Employer's long-term disability policy.

Although the 2004-2008 nonsupervisory contract contains provisions concerning duty and non-duty disability retirement benefits generally, the only explicit reference in the agreement to health insurance benefits for employees retiring on a disability pension is contained within Section 30.05(E) of the agreement, which pertains to employees in the Defined Benefit Plan No. 4. That section provides:

Employees who "retire" under the Defined Contribution Plan must meet all age and service requirements to be eligible for insurance and health care benefits. Employees hired prior to the date of execution of this Agreement by the County Executive who "retire" under the provisions of this plan shall be eligible for the same insurance and health benefits as an employee retiring from a Defined Benefit Plan. Effective December 1, 1999, retirement eligible Defined Contribution Plan No. 4 participants who withdraw all funds from the Plan at retirement shall be entitled to survivor health care benefits. Duty and non-duty disability retirees will be eligible December 1, 1997 (if like benefits are available for Defined Benefit Plan employees).

A new version of the Wayne County Health and Welfare Benefit Plan was adopted in 2006 and incorporated by reference in the 2004-2008 contract for AFSCME Locals 25, 101, 409 and 1659.

Under the new Plan, employees in retirement plans 1 through 6 " may be eligible for health care benefits and life insurance upon retirement, if they have met all the age and service requirements of the applicable retirement plan." The 2006 version of the Plan further provides that employees hired or rehired on or after December 1, 1990 " shall not be eligible for health care benefits and life insurance unless they retire with thirty (30) or more years of credited service." Section 2 of the Plan states that the benefit plan administrator " shall have full and final determination as to all issues concerning eligibility for benefits" , including the authority to interpret the Plan and its application.

In March of 2008, AFSCME Locals 1862, 2057 and 2926 executed a new collective bargaining agreement for the County's civilian supervisory employees covering the period December 1, 2004 to September 30, 2008. Around the same time, a new contract for the bargaining unit of supervisory law enforcement personnel represented by AFSCME Local 3317 was executed. That agreement also covers the period December 1, 2004 to September 30, 2008. With respect to retirement health care benefits, both of these agreements contain substantially the same or similar age and service requirements as the 2004-2008 non-supervisory contract described above, including adoption by reference of the 2006 Wayne County Health and Welfare Benefit Plan. This same language was carried over almost entirely intact to the successor contracts for AFSCME Locals 1862, 2057 and 2926 and AFSCME Local 3317, both of which cover the period October 1, 2008 through September 30, 2011. At the time of the hearing in this matter, Locals 25, 201, 409 and 1659 were in fact finding on a successor agreement to replace the parties' 2004-2008 contract.

Regardless of the general eligibility requirements for retirement health care set forth within the various collective bargaining agreements, the parties stipulated that it has been the practice of the County for the past thirty years to provide health care benefits to employees who retire on a disability pension. At the hearing in this matter, Respondent's attorney specifically acknowledged that disabled employees have received such benefits without regard to age or years of service with the County. The parties further agreed that at least four AFSCME bargaining unit members have retired on a disability pension since July of 2008 and are currently receiving medical benefits.

At the October 2009 meeting of the Wayne County Employees Retirement Board of Directors, representatives of the County discussed with the Board the issue of eliminating medical benefits for employees who are granted a disability pension. On October 30, 2009, the Unions filed the instant charge alleging that the Board had resolved at that meeting to impose a requirement that employees who retire with a disability pension must have thirty years of service with the County in order to be eligible for health care benefits. [FN10] According to the charge, the change was scheduled to go into effect on November 1, 2009.

On December 4, 2009, the County filed an answer in which it denied the factual allegations set forth in the charge. At the same time, Respondent filed a motion seeking to have the charge summarily dismissed on the ground that " [t]here is no basis for the claim." The motion provided, in pertinent part:

2. Specifically, Charging Party alleges that Respondent refused to abide by a past practice of granting medical benefits to retired employees who are granted a duty disability or non-duty disability pension and repudiated clear language, in collective bargaining agreements with AFSCME Locals 25, 101, 409, 1659, 2057, 2926, 3317 and 3308, granting those benefits. . . . Charging Party claimed that the change in medical benefits would be effective November 1, 2009.

3. November 1, 2009 has passed and employees who receive a duty disability or non-duty disability are still eligible to receive medical benefits.

4. Absent a change in the ability of employees to receive medical benefits when they take a disability retirement, there is no basis for a Charge of repudiation.

In its brief supporting the motion, the County asserted that " November 1, 2009 has passed and nothing has changed. All employees who receive a duty or non-duty disability retirement are eligible for medical benefits." Attached to the brief was a sworn affidavit of Livia Calderoni, the director of the County's Benefit Administration Divisions. Calderoni asserted, " The change alleged by the Charging Party concerning medical benefits relating to disability retirement has not been implemented."

On December 21, 2009, Charging Parties filed a reply to the County's motion for summary disposition. The Unions argued that the motion should be denied because no employee had retired on a disability pension since November 1, 2009. According to Charging Parties, the County intended to implement the change prospectively when the next member of one of the AFSCME bargaining units seeks to a duty or non-duty disability pension. In an order issued on December 23, 2009, I denied Respondent's motion for summary disposition on the ground that issues of material fact existed. An evidentiary hearing was scheduled to commence on April 20, 2010.

On March 17, 2010, approximately one month prior to the scheduled hearing in this matter, the County issued Administrative Personnel Order 1-2010 regarding health care for duty and non-duty disability retirees. The order states:

Due to extreme economic challenges that the County is facing, it has had to reevaluate the cost of providing discretionary health care benefits previously provided to employees in receipt of a duty or non-duty disability retirement, who do not meet the age and service requirements for a service pension.

In an effort to address a serious budgetary deficit, the County can no longer afford to provide discretionary health care benefits to employees in receipt of duty and non-duty disability retirements.

Therefore, employees applying for a duty or non-duty disability retirement on or after May 1, 2010 will no longer be eligible to receive health care benefits in conjunction with the duty or non-duty disability pension benefits.

Employees who meet all age and service requirements will still be eligible for health care benefits pursuant to applicable Collective Bargaining Agreements and the County's Health and Welfare Benefit Plan.

Discussion and Conclusions of Law:

Under Section 15 of the Act, public employers and labor organizations have a duty to bargain in good faith over "wages, hours and other terms and conditions of employment." Such issues are mandatory subjects of bargaining. MCL 423.215(1); *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). The test generally applied to determine whether a matter is a mandatory subject of bargaining is whether it has an impact upon wages, hours, or conditions of employment, or settles an aspect of the employer-employee relationship. *Detroit v Council 25, AFSCME*, 118 Mich App 211 (1982), *enf'g* 1981 MERC Lab Op 297. The Commission and the courts have adopted a broad and an expansive interpretation of "wages, hours, and other terms and conditions of employment" under Section 15 of PERA. It is well established that pension and retirement provisions are mandatory subjects of bargaining under Section 15 of PERA. See e.g. *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 63-64 (1974); *St Clair Shores*, 22 MPER 50 (2009). The benefits, coverage, and administration of a health insurance plan are also mandatory subjects of bargaining under the Act. See e.g. *Taylor Sch Dist*, 1976 MERC Lab Op 693; *Houghton Lake Ed Ass'n v Houghton Lake Bd of Ed*, 109 Mich App 1, 7 (1981).

A party violates PERA if, before bargaining, it unilaterally alters or modifies a term or condition of employment, unless that party has fulfilled its statutory obligation or has been freed from it. *Port Huron Education Ass'n v Port Huron Area School District*, 452 Mich 309, 317. A party can fulfill its obligation under Section 15 of PERA by bargaining about a subject and memorializing the resolution of that subject in the collective bargaining agreement. Under such circumstances, the matter is "covered by" the agreement. *Port Huron*, *supra* at 318; *St. Clair Intermediate Sch Dist*, 2000 MERC Lab Op 55, 61-62. As the Michigan Supreme Court stated in *Port Huron*, *supra* at 327, "Once the employer has fulfilled its duty to bargain, it has a right to rely on the agreement as the statement of its obligations on any topic 'covered by' the agreement."

In the instant case, Respondent contends that it satisfied its statutory obligation to bargain with Charging Parties by negotiating contract language governing the issue of health care benefits for retirees. According to Respondent, the terms of the parties' collective bargaining agreements, including those set forth within the Wayne County Health and Welfare Benefit Plan which is incorporated by reference therein, authorize the County to require that all employees, including disability retirees, satisfy age and service requirements in order to be eligible for retirement health care benefits. Charging Parties, however, assert that both the contracts and the Plan are silent with respect to health care benefits for disability retirees and that the County's refusal to provide retirement health care benefits to employees who receive a disability pension is contrary to the established past practice of the parties which has been in existence for thirty years up to and including May 1, 2010, the date upon which Administrative Personnel Order 1-2010 was issued.

A past practice that does not derive from the parties' collective bargaining agreement may nonetheless become a term or condition of employment which is binding on the parties.

Mid-Michigan Ed Ass'n v St Charles Comm Sch, 150 Mich App 763, 768(1986), rev'd on other grounds Port Huron Educ Ass'n, supra. See also Amalgamated Transit Union, Local 1564, AFL-CIO v Southeastern Mich Transp Auth, 437 Mich 441, 454, 455 (1991). If a past practice becomes part of the structure and conditions of employment, the past practice assumes the same significance as other portions of the collective bargaining agreement. Mid-Michigan, supra at 768. Where an employer institutes a practice and permits it to continue, it cannot later change the practice without first giving the union notice and an opportunity to bargain. Id. This principle recognizes the impracticability of the parties expressly listing or describing every conceivable practice or procedure within the agreement itself. [FN11]

In order to create a term or condition of employment through past practice, the practice must be mutually accepted by both parties. Where the collective bargaining agreement is ambiguous or silent on the subject for which the past practice has developed, there need only be "tacit agreement that the practice would continue." Id. However, where the contract unambiguously covers a term of employment that conflicts with a party's behavior, a higher standard of proof is required. In such situations, the unambiguous language controls unless the past practice is so widely acknowledged and mutually accepted that it creates an amendment to the contract. Port Huron Ed Ass'n, 452 Mich at 329. The Commission has consistently found that a mistake does not create an enforceable past practice. See e.g. Montcalm County, 1990 MERC Lab Op 954; Highland Park Sch Dist, 1976 MERC Lab Op 622. The nature of a practice, its duration, and the reasonable expectations of the parties may justify its attaining the status of a "term or condition of employment." Macomb County, 23 MPER 8 (2010), aff'd Macomb County v AFSCME Council 25, 294 Mich.App. 149, 818 N.W.2d 384, 25 MPER 24 (Mich. Ct. App. 2011).

In DPOA v City of Detroit, 452 Mich 359 (1996), the Court of Appeals held that the past practice of the medical board rendering a final and binding decision on the issue of whether an employee's disability was duty-related was so widely acknowledged and mutually accepted that it amended the contradictory and unambiguous contract language in the collective bargaining agreement. In finding that there was an agreement to modify the contract, the Supreme Court relied upon statements made by the attorneys for the City and the board of trustees acknowledging the existence of the longstanding practice, as well as the fact that the board of trustees had developed forms for use by the medical board in making the duty-relatedness finding.

In Macomb County, supra, a retirement ordinance which was incorporated into the parties' contracts stated that a joint and survivor pension benefit was to be the "actuarial equivalent" of the retiree's straight life allowance at the time of his or her retirement. However, during a succession of contracts over a 24-year period, the parties utilized a unisex mortality table which assumed that the pool of retirees selecting the optional joint and service pension was 100% female without regard for whether it would create equal-in-value pensions. The Commission found that the term "actuarial equivalent" as used in the retirement ordinance was ambiguous and that the use of the 100% female table had become a term and condition of employment which had been tacitly accepted by the parties. In affirming the Commission's finding that the unilateral change in mortality tables was unlawful, the Court of Appeals held that even if "actuarial equivalence" had the unambiguous meaning of "equal in value", as the employer had claimed, the parties' longstanding practice was so widely acknowledged and accepted that it

created an amendment to the contract which could not be unilaterally altered.

In City of Detroit (Dep't of Transp), 19 MPER 70 (2006), an unfair labor practice charge was filed after the employer initiated enforcement of a job specification requiring that general auto mechanics possess a commercial driver's license (CDL) as a condition of employment after having previously agreed to refrain from enforcement of that requirement. The Commission held that the employer violated PERA because the requirement had not been enforced for more than a decade after the employer had made the promise that it would not discipline mechanics who lacked a CDL. See also City of Flint, 20 MPER 67 (2007) (employer's practice of allowing retirees to designate a non-calendar year with twenty-seven pay dates when calculating final average compensation amended contractual language limiting such designations to years with twenty-six pay dates).

Here, the collective bargaining agreements between Respondent and Charging Parties have contained eligibility requirements for retirement health care generally since at least the 2000-2004 contracts. However, those agreements are essentially silent with respect to the issue of health care benefits for bargaining unit members who, as the result of a disability, stop working for the County under circumstances short of a "normal" retirement. In fact, with the exception of Section 30.05(E) of the 2004-2008 agreement covering Locals 25, 101, 409 & 1659, which pertains solely to nonsupervisory employees in the Defined Benefit Plan No. 4, the County did not cite any provision in either the contracts or the terms of the Wayne County Health and Welfare Benefit Plan which specifically references the issue of health care benefits for employees who retire on a disability pension. Accordingly, I conclude that this case should be evaluated under the reduced "tacit agreement" standard for determining whether the past practice created a term or condition of employment. However, even assuming *arguendo* that the collective bargaining agreements can be interpreted as specifically requiring that disabled retirees satisfy age and service requirements in order to be eligible to receive health care benefits, I would nevertheless conclude that Respondent's elimination of such benefits violated Section 10(1)(e) of PERA under the particular facts of this case.

The parties stipulated that the County has, for the past 30 years, provided health care benefits to employees who receive a duty or non-duty disability pension. In fact, the parties agreed that since the most recent collective bargaining agreements were negotiated in 2008, at least four bargaining unit members have retired on disability pensions and are receiving medical benefits. Notably, the County has not taken the position that the practice of granting health care benefits to disability retirees was a mistake, mere happenstance or oversight, nor did Respondent assert at the time the unfair labor practice charge was initially filed that the granting of such benefits was a discretionary action which the County was free to unilaterally discontinue. To the contrary, the record establishes that the past practice of the County providing health care benefits to disabled retirees without regard to age and service requirements was so prevalent and widely accepted that even the County's attorney and its benefits director admitted it existed. Respondent, in its motion for summary disposition, asserted that the charge should be dismissed because the change alleged by the Charging Parties had not, in fact, occurred, and that County employees who receive a duty or non-duty disability pension "are still eligible to receive medical benefits." In its brief in support of the motion, which predated both the announcement and implementation of the change,

the County asserted that "[a]ll employees who receive a duty or non-duty disability retirement are eligible for medical benefits." The County's benefit director also affirmatively acknowledged in a sworn affidavit the existence of the longstanding past practice by avowing that "[t]he change alleged by the Charging Party concerning medical benefits relating to disability retirement has not been implemented."

The County's reliance on *Butler v Wayne County*, 289 Mich App 664 (2010), to support its decision to eliminate the practice of providing health care benefits to disabled retirees is misplaced. In *Butler*, retirees of Wayne County filed a class action suit for breach of contract after the Employer changed the method for the calculation of supplemental life insurance (SLI) premiums from a flat rate structure to an age-rated system. The Court of Appeals concluded that the claimed past practice could not be relied upon where it was contrary to the express terms of Wayne County Health and Welfare Benefit Plan, which was explicitly incorporated by reference in the parties' collective bargaining agreement. The Court held:

[T]he CBA's only explicit reference to SLI provides that "[s]upplemental life insurance is available under a group plan at the option of the employee." It makes no mention of what the rate is or how it will be calculated. However, because the CBA incorporates the Plan, it contains an express provision that SLI will, at some point, be changing to an age-rated-premium system and that retirees will be eligible to "transfer" to that plan. Accordingly, plaintiff's contention that there is no provision contained in the CBA that relates to how the SLI rate will be calculated is without merit.

Id. at 677. Here, Respondent has not cited to any language in either the collective bargaining agreements or the Plan granting it the right to withhold health care benefits from disabled retirees "at the County's option" as was the case in *Butler*. *Id.* at 673.

Despite the County's attempt to rely on language in the contract pertaining to retirement health care generally, it is clear in this record that Respondent was fully aware of, and knowingly acted in accordance with, the long-standing practice relative to health care benefits for disability retirees. From the above statements of the County's attorney and its benefits director, as well as Respondent's consistent application of the policy over a 30-year period, I conclude that health care benefits for all employees who retire in receipt of a disability pension was a past practice so widely acknowledged and mutually accepted that it became a term and condition of employment such that the elimination thereof by Respondent, without first providing Charging Parties with notice and an opportunity to bargain, constituted a violation of Section 10(1)(e) of the Act.

The County's decision to eliminate the practice of granting health care benefits to disabled retirees just three months after its attorney and its benefits director acknowledged the existence of the past practice was particularly egregious. Moreover, this case represents the fourth time over the course of the past several years in which this same public employer has been found to have violated its duty to bargain in good faith under PERA. In *Wayne County*, 24 MPER 12 (2011), the Commission held that the County repudiated its contractual obligation toward the charging parties by failing to make annual service adjustment payments to members of non-supervisory and supervisory bargaining units. In *Wayne County*, 24 MPER 25 (2011), the Commission

concluded that the County violated its statutory bargaining obligation by unilaterally reducing the length of the workweek for unit members. In that case, there were no material facts in dispute and the Employer's position was indistinguishable from arguments previously rejected by the Commission in a case involving the same parties. After no exceptions were filed in Wayne County, 22 MPER 80 (2009), the Commission affirmed the finding of the ALJ that the County breached its duty to bargain in good faith by ignoring the union's request for presumptively relevant information. In that matter, the County chose to similarly ignore an order to show cause which had been lawfully issued by the ALJ. See also Wayne County, 22 MPER 65 (2009) (no exceptions) (County failed to satisfy its obligation to supply relevant information to the union). Were it not for *Goolsby v Detroit*, 211 Mich App 214, 224 (1995), a decision which the Commission has urged the Court of Appeals to reconsider, I would follow MERC's earlier decision in *Wayne-Westland Community Sch Dist*, 1987 MERC Lab Op 381, *aff'd sub nom Hunter v Wayne-Westland Community Sch Dist*, 174 Mich App 330 (1989) and award attorney fees and costs to Respondent as compensatory damages. [FN12]

I have carefully considered the remaining arguments of the parties and conclude that they do not warrant a change in the result. For the reasons stated above, I recommend that the Commission issue the following order.

Recommended Order

It is hereby ordered that the County of Wayne, its officers, agents and assigns, shall:

(1) Cease and desist from refusing to bargain collectively and in good faith concerning wages, hours and working conditions with AFSCME Council 25 and its affiliated Locals 25, 101, 409, 1659, 1862, 2057, 2926 and 3309 by unilaterally imposing age and service requirements on bargaining unit members who retire with a duty or non-duty disability pension.

(2) Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively and in good faith concerning wages, hours and working conditions with the above named Unions.

(b) Restore to individuals the terms and conditions of employment that were applicable prior to May 1, 2010 with respect to the availability of health care benefits for bargaining unit members who retired with a duty or non-duty disability pension and who were denied health care benefits.

(c) Make individuals whole for any losses they may have suffered because of the unlawful imposition of any unilateral changes in policies governing the availability of health care benefits for bargaining unit members who retired with a duty or non-duty disability pension and who were denied health care benefits, including interest at the statutory rate.

(d) Post copies of the attached notice to employees in conspicuous places on the Employer's premises, including all locations where notices to employees are customarily posted and on any website routinely utilized by the County of Wayne for employee access. Copies of this notice

shall remain posted for 30 consecutive days.

FN1. The most recent of the parties' agreements in the record expired September 30, 2011.

FN2. The date the parties reached agreement for the 2004-2008 contract between Respondent and Local 3317 is not clear from the record, but was apparently sometime after December 1, 2006 when the latest Wayne County Health and Welfare Benefit Plan became effective.

FN3. Respondent and Locals 25, 101, 409, and 1659 had not reached a new agreement at the time the record closed in this matter.

FN4. Quoting 1 Morris, Developing Labor Law (2d ed, 5th supp), ch 13, pp. 332—333.

FN5. In *BE & K Const Co v NLRB*, 536 US 516, 122 SCt 2390, (2002), the Supreme Court granted certiorari on the question of whether the NLRB "may impose liability on an employer for filing a losing retaliatory lawsuit, even if the employer could show the suit was not objectively baseless" *Id* at U.S. 533, S.Ct 2400. Indicating that "baseless" did not simply mean unmeritorious, unsuccessful, or debatable, the Court found the standard applied by the Board was unlawful and remanded the matter for further proceedings.

FN6. As in *Teamsters Local 122*, 334 NLRB 1190 (2001).

FN7. See, *Polydoroff v ICC*, 773 F2d 372, 375, (CA D.C. 1985).

FN8. Most recently in *Camelot Terrace*, 357 NLRB No. 161; 2011 WL 7121892.

FN9. Quoting *Elkouri & Elkouri*, *How Arbitration Works* (4th ed.), p. 441

FN10. The charge alleged that employees who retired on a duty-related disability had historically not been subject to any age or service requirements, but that employees receiving a non-duty disability pension were entitled to medical benefits as long as they had ten years of credited service in the Wayne County Retirement System. However, as described above, the parties stipulated at hearing that the longstanding practice of the County was to provide health care benefits to both duty and non-duty disability retirees regardless of age and service.

FN11. The multiple collective bargaining agreements submitted by the parties in this case exemplify this fact. Despite having been renegotiated numerous times, the contracts provide little guidance on the question of when health care benefits will be provided to disability retirees. The failure of the parties to expressly address an issue of obvious significance is entirely predictable where, as here, there is a longstanding and mutually understood past practice governing the behavior and expectations of the parties.

FN12. In *City of Detroit*, Case No. C09 I-166, issued June 2, 2011, ALJ Doyle O'Connor distinguished the *Goolsby* decision and proposed that the Commission assess sanctions against the charging parties for engaging in conduct abusive to the process. That decision is currently

pending on exception before the Commission. If the Commission adopts ALJ O'Connor's recommended remedy in City of Detroit, I would recommend that it consider similar remedies in this matter, given the multiple and egregious violations by the County.

Statutes Cited

PERA Section 10(1)(e)

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